BIENNIAL REPORT

OF THE

ATTORNEY GENERAL

TO THE

GOVERNOR OF THE STATE OF ALABAMA

FOR THE PERIOD

FROM OCTOBER 1, 1930

TO SEPTEMBER 30, 1932

THOMAS E. KNIGHT, JR. ..... Attorney General

JUDGE A. A. EVANS ..... First Assistant Attorney General

JOHN J. HAYNES ..... Assistant Attorney General

CHARLIE C. McCALL ..... Assistant Attorney General
(Resigned March 1, 1932)

LEE M. OTTS ..... Assistant Attorney General
(Died May 26, 1931)

FRONTIS H. MOORE ..... Assistant Attorney General

JAMES L. SCREWS ..... Assistant Attorney General

THOMAS SEAY LAWSON ..... Assistant Attorney General

ALBERT A. CARMICHAEL ..... Assistant Attorney General
(To Alabama Public Service Commission)

MATT H. MURPHY ..... Special Assistant Attorney General
(On Collection Delinquent Taxes, etc.)

MRS. ALICE K. BALDWIN ..... Secretary

MISS NELL M. JOHNSON ..... Stenographer

MRS. J. W. KIGHT ..... Stenographer

MISS EFFIE CRITTENDEN ..... Temporary Stenographer

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1933

ATTORNEYS GENERAL OF ALABAMA

1819-1932

Henry Hitchcock	1819
Thomas White	1823
Constantine Perkins	1825
Peter Martin	1832
Alexander B. Meek	1836
John D. Pelham	1836
Lincoln Clarke	1838
Matthew Lindsay	1839
Thomas D. Clarke	1843
William H. Martin	1847
Marion A. Baldwin	1850
John W. A. Sanford	1865
Joshua Morse	1868
John W. A. Sanford	1870
Benjamin Gardner	1872
John W. A. Sanford	1874
Henry C. Tompkins	1878
Thomas N. McClellan	1884
William L. Martin	1889
William C. Fitts	1894
Charles G. Brown	1898
Massey Wilson	1903
Alexander M. Garber	1907
Robert C. Brickell	1911
William L. Martin, Jr.	1915
F. Loyd Tate	1918
Emmett S. Thigpen	1918
J. Q. Smith	1919
Harwell G. Davis	1921
Charlie C. McCall	1927
Thomas E. Knight, Jr.	1931

Note: For many years, and until Feb. 20, 1866, the law required the Attorney General to act as solicitor for the circuit in which the seat of government was located.

LIST OF CIRCUIT JUDGES AND SOLICITORS

1st Circuit—Choctaw, Washington and Clarke Counties: Judge T. J. Bedsole, Grove Hill; Solicitor Joe M. Pelham, Jr., Chatom.

2nd Circuit—Butler, Crenshaw and Lowndes Counties: Judge A. E. Gamble, Greenville; Solicitor H. P. Rogers, Greenville.

3rd Circuit—Barbour, Bullock, Dale and Russell Counties. Judge J. S. Williams, Clayton; Solicitor Geo. W. Andrews, Jr., Union Springs.

4th Circuit—Bibb, Dallas, Hale, Perry and Wilcox Counties. Judge Thomas E. Knight, Selma; (appointed Justice Supreme Court 1932, succeeded by Judge John Miller, Camden); Solicitor Jos. H. James, Greensboro.

5th Circuit—Chambers, Macon, Randolph, Tallapoosa and Lee Counties. Judge S. L. Brewer, Opelika; Judge W. P. Bowling, LaFayette; Solicitor C. H. Vann, Roanoke (appointed Judge 1932) succeeded by R. H. Powell, Jr.

6th Circuit—Tuscaloosa County. Judge Henry B. Foster, Tuscaloosa; Solicitor Ed deGraffenreid, Tuscaloosa.

7th Circuit—Calhoun, Cleburne and Talladega Counties. Judge R. B. Carr, Anniston; Judge W. B. Merrill, Heflin; Solicitor J. B. Sanford, Talladega.

8th Circuit—Cullman, Lawrence, Limestone and Morgan Counties. Judge James E. Horton, Athens; Judge W. W. Callahan, Decatur; Solicitor Wade Wright, Decatur.

9th Circuit—Cherokee, DeKalb, Marshall and Jackson Counties. Judge W. W. Haralson, Fort Payne; Solicitor H. G. Bailey, Boaz.

10th Circuit—Jefferson County. Judge Richard V. Evans, Birmingham; Judge C. B. Smith, Birmingham; Judge H. P. Heflin, Birmingham; Judge Romaine Boyd, Birmingham; Judge Joe C. Hail, Birmingham; Judge Roger Snyder, Birmingham; Judge Gardner Goodwyn, Bessemer; Judge John Denson; Judge John P. McCoy, Birmingham; Judge William Walker, Birmingham; Judge J. Russell McElroy, Birmingham; Solicitor George Lewis Bailes, Birmingham.

11th Circuit—Colbert, Franklin and Lauderdale Counties. Judge J. Fred Johnson, Florence; Solicitor R. T. Simpson, Jr., Florence.

12th Circuit—Coffee and Pike Counties. Judge W. L. Parks, Troy; Solicitor E. C. Orme, Troy.

13th Circuit—Mobile County. Judge Alex T. Howard, Mobile; Judge Joel W. Goldsby, Mobile; Judge Claude A. Grayson, Mobile; Solicitor Bart B. Chamberlain, Mobile.

14th Circuit—Walker, Winston, Fayette, Lamar and Marion Counties. Judge R. L. Blanton, Jasper; Judge Ernest Lacy, Jasper; Solicitor B. G. Wilson, Jasper.

15th Circuit—Montgomery County. Judge Leon McCord, Montgomery; Judge Walter B. Jones, Montgomery; Solicitor W. T. Seibels, Montgomery.

16th Circuit—Blount, Etowah and St. Clair Counties. Judge O. A. Steele, Oneonta; Judge Woodson J. Martin, Gadsden; Solicitor W. G. Rains, Gadsden.

17th Circuit—Marengo, Greene, Pickens and Sumter Counties. Judge Ben F. Elmore, Demopolis; Solicitor W. R. Kimbrough, Linden.

18th Circuit—Clay, Shelby and Coosa Counties. Judge E. P. Gay, Lineville; Solicitor A. L. Hardagree, Ashland.

19th Circuit—Autauga, Chilton and Elmore Counties. Judge Lloyd Tate, Wetumpka; Solicitor Winston Huddleston, Wetumpka.

20th Circuit—Geneva, Henry and Houston Counties. Judge H. A. Pearce, Dothan; Solicitor J. N. Mullins, Dothan.

21st Circuit—Baldwin, Conecuh, Escambia and Monroe Counties. Judge F. W. Hare, Monroeville; Solicitor Hugh Caffey, Brewton.

22nd Circuit—Covington County. Judge Emmett S. Thigpen, Andalusia; Solicitor Robert S. Reid, Andalusia.

23rd Circuit—Madison County. Judge Paul Speake, Huntsville; Solicitor James H. Pride, Huntsville.

Hon. B. M. Miller,
Governor,
CAPITOL.

My dear Governor:

I transmit herewith Biennial Report of the Attorney General for period beginning October 1, 1930 and ending September 30, 1932. This Report speaks for itself.

I am deeply grateful for the excellent services accorded the State by the Assistants to the Attorney General, both special and regular.

Yours very truly,

THOMAS E. KNIGHT, JR.,
Attorney General.

TEK:B

SPECIAL CASES

PENDING AND DISPOSED OF

FROM

OCTOBER 1, 1930 THROUGH SEPTEMBER 30, 1932

REPORT OF JUDGE A. A. EVANS

L. H. BRASSELL, Petitioner
vs.
JOHN BRANDON, as State Auditor, Defendant
Mandamus in the Circuit Court of Montgomery

This was a petition in mandamus to compel the State Treasurer to pay petitioner the sum of eleven hundred and sixty-six dollars as salary for the period that he was absent from his work as associate member of the State Tax Commission while canvassing for the office of Attorney General on a leave of absence granted by the Governor without pay pending the campaign.

The Circuit Court on answer and proof by the State denied the petition.

On appeal to the Supreme Court, the judgment of the Circuit Court was affirmed.

REPORT OF MR. FRONTIS MOORE

The following civil cases are still pending:

Alabama Great Southern Ry. v. State,
Alabama, Tennessee & Northern Ry. v. State,
Birmingham Belt Ry. v. State,
Birmingham & Southeastern Ry. v. State,
Chattahoochee Valley Ry. v. State,
Illinois Central Ry. v. State,
Louisville & Nashville Ry. v. State,
Mobile & Ohio Ry. v. State,
Seaboard Air Line Ry. v. State,
Southern Ry. v. State,
Western of Alabama v. State,
Tuskegee Ry. v. State,
St. Louis & San Francisco Ry. v. State,
Chicago etc. Ry. v. State,
Atlantic Coast Line v. State.

The foregoing cases represent appeals from the ad valorem property assessment made by the State Tax Commission and have not been tried. In all of them, temporary injunctions were granted conditioned upon the railroads paying the amount of taxes admitted to be due, which has been done.

There are also pending the cases of Nashville, Chattanooga, & St. Louis Ry. v. State, and Central of Georgia v. State. These cases have been tried in the Circuit Court of Montgomery County in Equity, and are now on submission for final decree. The first of these cases lasted a week, and the second almost two weeks. The last of the railroad appeals,

to-wit, the Belt Line of Montgomery was dismissed by the appellant railroad.

There are also pending the following ad valorem tax appeals:

Birmingham News v. State,
Southern Natural Gas Corporation v. State.

Other cases pending include five separate cases grouped for the purpose of this Report as the Chain Store cases, involving the constitutionality of the Chain Store Act of 1931. Testimony has been completed, and the case will be submitted to the Court for final decree on May 5th.

The case of State v. Willie D. Stephenson involves the liability for chauffeur's license of drivers of public trucks such as the Southeastern Express Company. Judgment in the Common Pleas Court of Montgomery was in favor of the State and the case is now on appeal in the Circuit Court of Montgomery County.

There are also pending the case of the State v. City of Montgomery involving liability of the counties and cities for taxes on gasoline imported from without the State, stored in their own tanks and withdrawn for governmental uses, and the cases of Union Bank & Trust Company v. S. H. Blan, and Union Bank & Trust Company v. R. C. Phelps, Tax Collector. These involve a construction of the so-called excise tax on banks of 1932.

The following cases were disposed of without trial:

J. A. Camp, Tax Collector v. Gadsden Loan and Investment Company. Appeal was dismissed on account of the failure of the Solicitor to prepare the bill of exceptions.

State v. Duroc Breeders Farm Corporation. Judgment was taken in Circuit Court of Autauga County for franchise tax and the amount collected.

Gulf Furniture Company, Monk Furniture Company, and Phillips Furniture Company v. State. These were attempted appeals from capital stock assessments and were dismissed on motion on account of appeals being prosecuted in the wrong Court.

Hill Grocery Company v. State. This is an appeal from the capital stock assessment and was tried, but before judgment, was settled by the addition of a $400,000.00 capital stock assessment to that already existing.

The Prudential Life v. State. This was dismissed on the authority of Penn Mutual Life Insurance Co. v. State, 135 So. 346, hereafter referred to.

The following cases have been through the Appellate Courts:

Anglo-Chilean Nitrate Sales Corporation v. State, 142 So. 87. This involved franchise tax measured by property consisting of imports. Judgment was rendered in favor of the State in the Supreme Court, but was reversed in the United States Supreme Court, 77 L. Ed.

State v. Investors Syndicate, 140 So. 368, and State v. Mortgage Bond Company of New York, 140 So. 365. These were companion cases involving the construction of the amendment to the 1923 Revenue Act enlarging the powers of Deputy Tax Assessors in Jefferson County.

State v. Guaranty Savings Building & Loan Association, 144 So. 104. In this case the Supreme Court upheld the right of the State to collect the franchise tax out of building and loan associations.

National Cash Credit Association v. State, 141 So. 541. Franchise tax-decision adverse to the State.

Penn Mutual Life Insurance Company v. State, 135 So. 346, involving the constitutionality of that part of the Revenue Act of 1927 excepting mortgage loans from franchise tax. The provision was held constitutional.

Daniel Pratt v. State, 145 So. 163, 165, upheld the right of the State to collect share taxes out of the stockholders of a defunct bank.

State Docks Commission v. Mary E. Barnes, 143 So. 581. This case decided that the State Docks Commission was an agency of the State and not subject to suit.

Woco Pep Company v. Butler, 142 So. 509, involving the constitutionality of the 1931 Gasoline Act. Decision in favor of the State.

State v. Wright (2 cases) 141 So. 584, and 141 So. 585. These cases held that property purchased with veteran's compensation money was subject to taxation.

Harman v. Ide, 140 So. 418. This case involved the construction of certain portions of the School Code. Decision was in favor of the State.

R. C. Phelps v. Union Bank & Trust Company, 142 So. 552. This case upheld the right of the State to levy taxes on the shares of State Banks irrespective of its power over National Banks. Appeal was prosecuted to the United States Supreme Court and affirmed. 77 L. Ed.

Kansas City Bridge Company v. Alabama State Bridge Corporation. This case decided that the Bridge Corporation was an agency of the State and not subject to suit. It was tried in the Federal District Court at Montgomery. Appeal was taken to the Circuit Court of Appeals and affirmed, and certiorari denied by the Supreme Court of the United States.

In addition to the foregoing there have been a number of cases involving collection of taxes or liability for license which have been tried, some of which are pending and some disposed of. The office has also been called on to advise with numerous local authorities in the matter of national bank taxation. Appearances were made in the Federal Courts of Mobile and Montgomery, and formal appearance in several State Courts. Due to the original decision of Judge Grubb in the Dothan National Bank case it has generally been held that Section 5219 of the Revised Statutes has been violated. Since these decisions the share tax has been repealed and the excise tax substituted therefor. Likewise the Supreme Court of the United States in the recent case of First National Bank of Shreveport of Louisiana v. Tax Commission, has apparently greatly modified the position taken in the Minnesota and Wisconsin cases, decided about four years ago.

REPORT OF A. A. CARMICHAEL

The following cases are pending:

State of Alabama v. National Surety Company, J. W. Frost and Addison Mitchell McConnell. Suit against Probate Judge and Register in Chancery and sureties on the official bond of each. Amount involved approximately fifteen thousand dollars.

There are at this time pending in the several Circuit Courts of the State of Alabama seventy-three prosecutions on indictments, involving violations of the so-called Blue Sky Laws of the State of Alabama or Securities Laws of the State of Alabama. The Attorney General is charged with the prosecution of each of these cases.

Furr v. Odom, damage suit pending in the Circuit Court of Montgomery County, Alabama.

Chas. C. Greer, as Superintendent of Insurance, v. Great Southern Burial Association. Receivership in the Circuit Court, In Equity, Jefferson County. The case involves the impairment of capital stock of an insurance company.

Chas. C. Greer, as Superintendent of Insurance, v. T. B. A. Benevolent Association, mandamus, Circuit Court of Montgomery County, Alabama.

Chas. C. Greer, as Superintendent of Insurance, v. International Benefit Association. Receivership in Circuit Court of Montgomery County, Alabama, In Equity. Involves the receivership of an insurance company.

In each receivership matter there are a number of petitions and hearings. It is seldom that an insurance company receivership involves less

than half a dozen petitions and hearings. These hearings, of course, are exactly like separate cases.

Chas. C. Greer, as Superintendent of Insurance v. United Alabama Life and Casualty Company, Receivership, in the Circuit Court of Montgomery County, in Equity.

Chas. C. Greer, as Superintendent of Insurance, v. Union Mutual Insurance Company, receivership of an insurance company in the Circuit Court of Montgomery County, Alabama.

State of Alabama v. Robert E. Adams, National Surety Company, et al. This is a suit against a former Probate Judge and the sureties on his official bond for the collection of public moneys.

State of Alabama v. Alabama Warehousing Company. A test suit in the Circuit Court of Mobile County. The suit was instituted for the purpose of testing the constitutionality of certain parts of the United States Warehouse Act. The case was tried in the Circuit Court of Mobile County, where the State won. An appeal was taken to the Court of Appeals of the State of Alabama, where the case is now pending. The case will be reviewed by the Supreme Court of the State of Alabama, and probably by the Supreme Court of the United States. The case involves many thousands of dollars in revenue for the State of Alabama, and involves the right of the State of Alabama to license warehouses within the State of Alabama.

Blaum, doing business as the Dothan Jewelry Company v. J. H. Hard, as State Comptroller. Mandamus, pending in the Circuit Court of Montgomery County, Alabama.

R. S. Anderson v. L. G. Smith, W. C. Herzberg and A. L. Hawkins. This is a damage suit against the State Highway Commission, pending in the Circuit Court of Calhoun County, Alabama.

In the matter of H. H. Montgomery, as Superintendent of Banks, liquidating the Baldwin County Bank of Baldwin County, in the Circuit Court of Baldwin County, Alabama, in Equity. This case involves the liquidation of the said Bank.

State of Alabama v. C. E. Borom and Southern Surety Company. Suit pending in the Circuit Court of Montgomery County, Alabama, for the collection of public moneys. $40,000.00 collected.

State of Alabama v. R. Tyler Goodwyn, Receiver of Southern Surety Compay. This suit involves a balance of approximately $12,000.00 due the State of Alabama and Russell County. The case also involves the receivership of the Southern Surety Company and also involves the $50,000.00 worth of securities placed by the said Southern Surety Company with the

State of Alabama for the protection of the citizens of the State of Alabama.

Chas. C. Greer, as Superintendent of Insurance, v. First National Life Insurance Company of America. This is a receivership of an insurance company, pending in the Circuit Court, in Equity, Montgomery County, Alabama. In this matter more than forty petitions and separate hearings have been filed and heard. This receivership involves work equal to not less than from twenty-five to forty separate and distinct cases.

State of Alabama v. Frost, Frost, Estes & Howard. This is a suit pending in the Circuit Court of Limestone County, Alabama, instituted for the purpose of collecting a large sum of public moneys due the State of Alabama and Limestone County.

State of Alabama v. K. L. Forrester and National Surety Company. This is a suit in the Circuit Court of Houston County, Alabama, for the collection of approximately $10,000.00, public school funds due Houston County.

State of Alabama v. H. H. Montgomery, as Superintendent of Banks, and Farmers and Merchants Bank of Athens. This is a suit in equity pending in the Circuit Court of Limestone County, Alabama, for the collection of public moneys.

State of Alabama and Tallapoosa County, v. Pattie N. Garrett, National Surety Company, and the First National Bank of Alexander City, pending in the Equity Circuit Court of Montgomery County, Alabama. This case was instituted for the purpose of collecting public moneys.

State of Alabama and Tallapoosa County v. Pattie N. Garrett, John Pogue, Wm. Gray, Jr., and H. C. Sturdivant. This case is pending in the Circuit Court, in Epuity, Tallapoosa County, Alabama, and was instituted for the purpose of collecting moneys belonging to the State and Tallapoosa County.

State of Alabama and Tallapoosa County v. Pattie N. Garrett, as Administratrix of the estate of H. O. Garrett, deceased. This case is pending in the Circuit Court, in Equity, of Tallapoosa County, Alabama.

State of Alabama and Tallapoosa County v. Pattie N. Garrett, and Pattie N. Garrett, as Administratrix of the estate of H. O. Garrett, deceased, and National Surety Company pending in the Circuit Court of Montgomery County, Alabama.

State of Alabama and Tallapoosa County v. Pattie N. Garrett, as Administratrix of the estate of H. O. Garrett, deceased, pending in the Circuit Court, in Equity, of Tallapoosa County, Alabama.

A. O. Harrell v. L. G. Smith, Jordan and Herzberg, damage suit pend-

ing in the Supreme Court of the State of Alabama. The case was tried in the Circuit Court of Jefferson County some weeks ago.

The State of Alabama and Pickens County v. Carl M. Glass and United States Fidelity and Guaranty Company. The amount involved is approximately $11,000.00, pending in the Circuit Court, in Equity, Montgomery County, Alabama.

The State of Alabama and Pickens County v. H. H. Montgomery, pending in the Circuit Court of Pickens County, Alabama.

State of Alabama v. Wm. D. Stapleton and National Surety Company, pending in the Circuit Court of Montgomery County, Alabama.

State of Alabama v. R. M. McLeon and National Surety Company. Amount involved approximately $17,000.00, pending in the Circuit Court of Montgomery County, Alabama.

State of Alabama and Crenshaw County v. O. W. Patterson and Union Indemnity Company, pending in the Circuit Court of Montgomery County, Alabama. Amount involved approximately $9,500.00.

State of Alabama and Crenshaw County v. R. Tyler Goodwyn, Receiver, Union Indemnity Company, pending in the Equity Court, Montgomery County, Alabama.

State of Alabama v. National Surety Company and Lilla A. Simmons, pending in the Circuit Court of Baldwin County, Alabama. Amount involved approximately $53,000.00.

State of Alabama and Tallapoosa County v. C. R. Young, B. L. Young, Alexander City Bank and H. H. Montgomery. $40,000.00 collected. The balance, approximately $30,000.00, is involved in this suit pending in the Circuit Court of Tallapoosa County, Alabama, in Equity.

Chas. C. Greer, as Superintendent of Insurance v. United Alabama Life & Casualty Company, Receivership, pending in the Circuit Court of Montgomery County, Alabama.

Chas. C. Greer, as Superintendent of Insurance v. International Benefit Association, a corporation. This is a receivership pending in the Circuit Court of Montgomery County, Alabama.

There are pending in the various Circuit Courts of the State of Alabama, thirty-five prosecutions for violations of the Alabama Motor Carrier Acts of 1927 and 1931.

State of Alabama and Greene County v. United States Fidelity and Guaranty Company, and J. F. Lee, pending in the Circuit Court of Mont-

gomery County, Alabama. Suit for a shortage in public funds. Amount involved about $4,000.00.

State of Alabama and Greene County v. W. J. Hardy and National Surety Company, pending in the Circuit Court of Montgomery County, Alabama. Amount involved approximately $3,500.00.

State of Alabama and Sumter County v. M. C. Jarman and Fidelity and Deposit Company of Maryland, pending in the Circuit Court of Montgomery County, Alabama.

State of Alabama and Sumter County v. M. C. Jarman and Receivers, Union Indemnity Company, pending in the Circuit Court of Montgomery County, Alabama.

State of Alabama and Hale County v. John R. Martin and Receivers of National Surety Company, pending in the Circuit Court.

State of Alabama and Hale County v. D. B. Payne and United States Fidelity and Guaranty Company, pending in the Circuit Court of Montgomery County.

State of Alabama and Hale County v. H. S. Chapman and Maryland Casualty Company, pending in the Circuit Court of Montgomery County, Alabama.

The following cases have been disposed of:

Chas. C. Greer, as Insurance Commissioner of the State of Alabama, v. Aetna Life Insurance Company of Hartford, Conn. This was a mandamus proceeding instituted by the Aetna Life Insurance Company against Chas. C. Greer, as Superintendent of Insurance of the State of Alabama. The Insurance Company proposed to sell a certain plan of insurance in the State of Alabama. The Superintendent of Insurance refused to approve the plan. The case was tried in both the Circuit Court and the Supreme Court.

R. E. Smith v. M. V. Henry, in Equity, Jefferson County Circuit Court. This was a bill in equity for the purpose of determining the ownership of various items of money aggregating several thousand dollars, paid into an Inferior Court of Jefferson County. The Act under which the Court functioned was declared unconstitutional.

L. H. Brassell v. John Brandon as State Auditor. This was a mandamus proceedings instituted in the Circuit Court of Montgomery County. The case was tried in both the Circuit Court and the Supreme Court. The purpose of the suit was to determine whether the petitioner should be issued warrants in payment of claimed salary. The State won the case in the Supreme Court.

Brown Funeral Homes and Insurance Co., v. Chas. C. Greer, as Superintendent of Insurance. This was a mandamus proceedings in the Circuit Court of Montgomery County.

State of Alabama v. Willie D. Stephenson, in the Circuit Court of Montgomery County. Suit for collection of license.

State of Alabama v. Cheney Lime & Cement Company, in the Circuit Court of Montgomery County, Alabama. This was an appeal from assessment made by the State Tax Commission. The case was decided in favor of the State.

State ex rel. Franklin County v. Hester, in the Circuit Court of Franklin County. This case was tried in the Circuit Court of Franklin County and also in the Supreme Court. The case relates to an Act of the Legislature of Alabama dividing trial tax between the State and the counties. The case was a mandamus proceeding.

State of Alabama v. Woodie Lewis and Union Indemnity Co., in the Circuit Court of Montgomery County, Alabama. Suit against Circuit Clerk and sureties on his official bond for the collection of public moneys. The money sued for was collected.

Alabama Public Service Commission v. St. Louis and San Francisco Railway Co., involving enforcement of order of Public Service Commission, in the Circuit Court of Montgomery County, Alabama.

The State v. Edward deGraffenried, Circuit Solicitor, Tuscaloosa County. Impeachment proceedings in the Circuit Court of the State of Alabama on recommendation of Grand Jury of Tuscaloosa County.

State v. Edward deGraffenried, in the Circuit Court of Tuscaloosa County. Prosecution for arson.

Since the beginning of this administration this office has disposed of twenty-four prosecutions, on indictment, in the several circuit courts of this State. Convictions have been had in more than two-thirds of these cases.

Roy Garrett, as Receiver, v. A. J. Morrow, Tax Collector. Petition for mandamus in the United States District Court, involving taxes due a county by the receiver of a National Bank.

Chas. C. Greer, as Superintendent of Insurance, v. Tom Boone, Jr. Mandamus, Circuit Court in Equity, Montgomery County, Ala.

State of Alabama and Limestone County v. Fidelity and Deposit Company of Marylnad, and W. J. Howard. The amount involved was approximately $11,000.00. The money was collected.

State of Alabama v. National Surety Company and Steadman Wood. Disposed of in the Circuit Court of Montgomery County, Ala. Amount collected approximately $11,000.00.

State of Alabama v. Owen D. Sparks and Union Indemnity Company. The amount collected approximately $8,000.00.

State of Alabama and Alabama Public Service Commission v. United States et al., in the Supreme Court of the United States.

State of Alabama v. National Surety Company and C. D. Wadsworth. This case was tried in both the Circuit Court of Montgomery County, Ala., and the Supreme Court of Alabama. Amount collected approximately $1700.00.

REPORT OF MR. THOMAS S. LAWSON

State vs. Hobbie Grocery Co.—Montgomery County. Lost in lower court. Affirmed. Case dealt with the construction of the statutes relating to truck license.

The Scotch Lumber Co. (a corporation) vs. W. W. Daffin, Jr., as Tax Assessor and Ex Officio Secretary of the Board of Review of Clarke County, Alabama—Clarke County. Lost in lower court. Reversed and rendered in Supreme Court. Case dealt with taxes of petitioner and the rights and duties of Boards of Review. Case meant about $7,000.00 to State and County.

R. L. Anderson vs. L. G. Smith, et al.—Calhoun County. Pending. Case involves liability of officers of State Highway Department for alleged damages to plaintiff's property.

Turnipseed et al vs. S. H. Blan—Montgomery County. Case not assigned to me but I participated in trial in nisi prius court. Won. Now on appeal.

Jewell C. Hall vs. S. H. Blan—Montgomery County. Case handled by me before Judge Roger Snyder. Now being handled by Attorney General.

State ex rel Thos. E. Knight, Jr., Attorney General vs. Robert E. Adams—Escambia County. Impeachment proceedings. Defendant resigned after information filed.

Child Welfare Department vs. Sabre Worley—Habeas Corpus Proceedings. Bainbridge, Georgia. Won.

State vs. Stovall—Montgomery County. License case. Won.

REPORT OF MR. JOHN J. HAYNES

On January 25, 1933, the case of B. H. Cooper v. I. E. Hunt, involving violation of the Alabama Contract Common Carrier Motor Vehicle Act of 1932 was set for hearing in the municipal court of Birmingham, presided over by Judge Abernathy.

On request of Mr. Cooper, who is the License Inspector of Jefferson County, the Alabama Public Service Commission requested Attorney General Knight to designate an Assistant Attorney General to accompany Mr. J. H. Alldredge, Representative of the Alabama Public Service Commission, to Birmingham to assist Assistant Solicitor Deason in the trial of the case. Mr. John J. Haynes was designated by Mr. Knight for this purpose.

Upon the trial of the case Defendant Hunt was found guilty and fined $15.00 and costs.

OPINIONS

October 11, 1930

The Superintendent of Education,
Montgomery, Ala.

Schools—Persons, firms or corporations making contracts with county boards of education must furnish bonds.

Opinion by Assistant Attorney General Koonce.

Dear Sir:

I have your letter of November 30, 1929, in which you refer to the Act approved February 10, 1927, (General Acts 1927, p. 37) which Act provides that persons, firms or corporations entering into contracts with the State or any county or municipal corporation must furnish bond.

You request my opinion:

Does the above Act apply to persons, firms or corporations who execute contracts with a county board of education for the repair or erection of school buildings?

In my opinion the above Act requires persons, firms or corporations entering into a contract with any county board of education for the repair, construction or prosecution of any public building to execute a bond.

Jefferson County Board of Education, v. Union I. Co., 119 So. 837.

School buildings which are repaired or erected by a county board of education are public buildings. The county board of education performs certain duties for the county, and is a branch of the county government. It is, therefore, my opinion that the Legislature, in enacting the above Act, intended that such Act should apply to contracts of county boards of education.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

October 16, 1930

The Sheriff,
Selma, Dallas County, Alabama.

Prisoners: Medical attention in hospital. Payment therefor.

Opinion by Assistant Attorney General Cobb.

Dear Sir:

I have your letter of October 15, 1930, in which you request my opinion:

> If a person charged with a felony be arrested in a hospital and becomes a prisoner in the custody of the sheriff and that further hospital treatment is necessary and said prisoner is unable to provide such treatment for himself does this become a legal charge against the County?
>
> Under the above statement of facts the answer to your inquiry is in the affirmative.

Section 4808, Code of Alabama, 1923, reads as follows:

> "4808. Necessary clothing, medicines, etc., to insolvent prisoners. —Necessary clothing and bedding must be furnished by the sheriff or jailer, at the expense of the county, to those prisoners who are unable to provide them for themselves; and also necessary medicine and medical attention to those who are sick, when they are unable to provide them for themselves."

Under the provisions of Section 4808 of the Code, supra, the sheriff is required to furnish to those prisoners who are sick and unable to provide for themselves the necessary medicine and medical attention at the expense of the county. This man although in the hospital is as much a prisoner of the sheriff as he would be if he were actually confined in the jail. The county is liable for the expense of medicine and medical attention furnished him by the sheriff after his arrest in the hospital. He has been in the legal custody of the sheriff since his arrest and has been his prisoner. It will be noted that the above quoted section simply refers to those prisoners who are sick. If they are sick or wounded and unable to provide for themselves then it becomes the duty of the sheriff to furnish necessary medicine and medical attention after their arrest. It is not necessary that the sheriff actually confine the prisoner in jail and subsequently take him to a hospital in order to render the county liable for this expense. It is the legal maxim that the law does not require the doing of a useless thing and this maxim is especially applicable in the instant case. The hospital is the proper place for this prisoner and if he is unable to provide for himself the sheriff is authorized to bind the county to pay for medicine and medical attention.

Report of Attorney General, 1920-1922, p. 364, et seq.

Opinion to Circuit Solicitor, Roanoke, Randolph County, Alabama, Sept. 30, 1930. Book 19, (Office Edition).

Malone vs. Escambia County, 116 Ala. 218.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

October 16, 1930

The Judge of Probate,
Clanton, Chilton County, Alabama.

Elections—Corrupt Practice Act—application to general elections.

Opinion by the Attorney General.

Dear Sir:

I have your letter of October 9, 1930. In it you state that several candidates for election to public office in your County at the general election to be held in November, 1930, have failed to file in the office of the Judge of Probate of Chilton County, announcement of their committee to receive and disburse funds as provided by Section 588, Code of Alabama, 1923. I understand from your letter that these candidates were nominated in the primary election held in August 1930, that prior to said primary election, and at the time that each of them announced as a candidate in said primary election, or within five days after each of them had announced as candidates in said primary election, they complied with Section 588, Code of Alabama, 1923, but that since the primary election none of them has redesignated a campaign fund committee under Section 588, supra.

You request my opinion:

> In view of Section 589, Code of Alabama, 1923, shall I place the names of such candidates upon the ballots for the general election?

In answer to your question will state that you should place the names of such candidates upon the ballots for the general elections. When a person announces that **he is** a candidate for any county office, he must file with the Judge of Probate of his county the name of not less than one nor more than five persons elected to receive, expend, audit and disburse all moneys contributed, donated, subscribed or any way furnished or raised for the purpose of aiding or promoting the **nomination or election** of such candidate, together with a written acceptance or consent of such person to act as such committee. If a candidate chooses to do so, he may declare himself as the person chosen to act as such committee. I understand from your communication that the candidates concerned complied with Section 588 prior to the primary election held in August 1930. If they did so, then the committees then named by such candidates continue on through the general election unless there is a change in the personnel thereof. The Corrupt Practice Law (Article 26 of Chapter 19, Code of Alabama, 1923) applies both to primary and general elections.

Section 583, & Section 584, Code of Alabama, 1923.

The committee appointed by the candidate prior to the primary election was required to render a statement of campaign expenditures both

before and after said primary election, and, as stated above, unless the personnel of the committee of the candidate has been changed, said committee continues to act on through the general election of November, 1930, and campaign expenditures by the candidate must be made through such committee.

Sections 588, 589, & 591, Code of Alabama, 1923.

The campaign fund committee must file a statement of campaign expenditures in the general election both before and after the general election in the manner prescribed by law.

Sections 592, 593, 594, 595, Code of Alabama, 1923.

Violations of the provisions of the Corrupt Practice Law are punishable as a misdemeanor. Section 3937, Code of Alabama, 1923.

There are certain other penalties for failure to file expense accounts. Sections 594 & 595, Code of Alabama, 1923.

The "announcement" of the candidacy of the candidates mentioned by you was made prior to the primary election. When they became successful nominees of their respective parties, they made no other "announcement" as that expression is used in Section 588, supra, and, indeed, were not required to do so under the law.

Since the willful failure or refusal of a candidate to meet the requirements of Section 588, supra, is punishable as a misdemeanor, as well as by ineligibility to have his name placed upon the ticket, said statute must be strictly construed.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

October 17, 1930

The Judge of Probate,
LaFayette, Chambers County, Ala.

Probate Courts-Costs—Costs of jury impanelled in will contest—Where placed.

Opinion by Assistant Attorney General Patrick.

Dear Sir:

I have your letter of July 30, 1930. In it you request my opinion:

Whether the costs of a jury impanelled in contest of a will in probate court are taxed against the estate, the contestant, or is it paid from the general fund of the county?

Section 9579 (1), Alabama Code of 1923, provides for the probate of wills in probate court.

Before the probate of a will any person interested therein, or any person who would have been an heir had the testator dies intestate, may contest a will and, upon application, either party may secure a trial by jury to such action.

Section 10625, Code of Alabama, 1923.

Section 7294, Code of Alabama, 1923, reads as follows:

"7294. Pay of jurors in probate court.—Jurors in the probate court are entitled to the same pay as in the circuit court, except as herein otherwise provided, upon the certificate of the Judge of Probate stating the number of miles traveled, and the amount of compensation to which they are entitled, and be paid in the same manner as jurors in the circuit court."

Section 7291, Code of Alabama, 1923, reads as follows:

"7291. Jurors in circuit courts.—Regular and tales jurors serving in the circuit court in civil and equity cases are entitled to the same fees and allowances as provided by law for criminal cases, to be evidenced and paid in the same manner."

Section 3760, Code of Alabama, 1923, reads as follows:

"3760. Regular jurors' fees; provided by oath of jurors; certificate of clerk.—Regular jurors, grand petit, are entitled to three dollars for each day's services, five cents for each mile traveled in going to and returning from court, and ferriage and toll, to be proved by the oath of the juror before the clerk of the court, whose duty it is to give each juror a certificate, stating therein the number of days he has served, the number of miles he has traveled, the amount of ferriage and toll he has paid, and the amount of compensation to which he is entitled; which certificate shall be receivable in payment of county taxes, and other county dues, and payable out of the county treasury."

On June 5, 1929, I wrote an opinion to the Probate Judge of Hale County, in which I stated that probate judges are authorized to pay the jurors in will contest cases out of the general funds of the county treasury.

Opinions Attorney General, Book 12, p. 14, (Office Edition).

This remains my opinion. In answer to your query, it is my opinion that the costs of a jury impanelled in contest of a will are to be taxed and paid out of the general funds of the county in accordance with the provisions of Section 3760, Code of Alabama, 1923.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

October 21, 1930.

The Director,
Child Welfare Department,
CAPITOL.

Child labor—employing, permitting or suffering to work in any capacity child under sixteen years of age upon the stage of any theatre or concert hall or any connection with any theatrical performance or other exhibition or show prohibited.

Opinion by the Attorney General.

Dear Madam:

I have your letter of October 21st. In it you state that a certain female child, five years of age, is on the vaudeville bill at the Ritz Theatre in Birmingham this week; that said child has broadcasted over the National Broadcasting Company and is now on a tour over the Radio Keith Orpheum Circuit of New York City; that the manager of the Ritz Theatre states that the child receives no compensation from that Theatre and further states that the child is not being used for advertising purposes inasmuch as she has never played in motion pictures and also claims that her performance is educational and not commercial in nature. You also state that said child's act at said Theatre on the afternoon of October 20th was that she came on the stage with the spotlight turned on her and sang three popular jazz songs and then gave another one as an encore. You also state that the Ritz Theatre advertised the appearance of said child in a newspaper, on street placards, and by having her act headlined across the front of the Theatre.

You invite attention to a former opinion by this office to your Department dated June 6, 1924, and also to an opinion rendered by this office to your Department on December 4, 1929.

You request my opinion:

Is the playing of said child, as above described, a violation of Section 3500, Code of Alabama, 1923, and particularly subsection 15 thereof?

In answer will state that it is.

From the facts as stated by you it is evident that the performance of the child is being used by the Ritz Theatre for commercial purposes, and certainly to attract trade to the Theatre.

Subsection 15, Section 3500, Code of Alabama, 1923, is as follows:

> "Nor shall any child under the age of sixteen years be employed upon the stage of any theatre or concert hall, or in connection with any theatrical performance or other exhibition or show. * * * * *"

The first sentence of this Section is as follows:

> "No child under the age of sixteen years shall be employed, permitted or suffered to work in any capacity: * * * * * *"

and then followed the various subdivisions setting out the capacities in which children of the age mentioned shall not be employed, permitted or suffered to work.

Upon a careful reading of Section 3500, it will be observed that two categories of child activities are considered by said Section, viz: first, those enumerated in subdivisions (1) to (14) inclusive, and subdivision (16), and second, those enumerated in subdivision (15) of said Section. In the first categody are those for the performance of which no child can be employed, nor can any child be permitted or suffered to work at. In the second category are these for the performance of which no child can be "employed"; but the words "permitted or suffered to work," are not here used. It was, in my opinion, the judgment of the Legislature that work in any of the first 14 subdivisions or in subdivision 16 was, under all conditions injurious to either the health or to the physical or moral development of a child. Childhood is, in an especial sense, the period of development and of danger. It was the purpose of this law to protect children below the age of sixteen against the necessarily dangerous and injurious effects of the activities enumerated in the first fourteen subdivisions and in subdivision 16. Here no one is permitted to employ them, neither are the children permitted or suffered to engage in such work.

In subdivision (15) the inhibition goes only to employment. Employment as here used, is in the sense of commercializing or exploiting. In my opinion, it was not intended to prohibit the permitting or suffering of children to appear upon the stage of a theatre where the parent or guardian as well as the child desires it, and to the extent that may be of educational advantage to the child, and, under such management as will safeguard its health and morals. In other words, the statute does not regard the fact of the child taking part in a play upon the stage of a theatre as necessarily injurious to the child, hence the words "permitted" and "suffered" are not used in this connection. Where the child is properly looked after and free to engage in the act or not and the parent or guardian de-

sires it, and receives no compensation other than the educational advancement of the child, and where there are no contractual duties to be performed, **and the child is in no way exploited for gain,** I am of the opinion that such appearance of a child upon the stage of a theatre is not prohibited by subdivision (15) of Section 3500.

In some instances motion picture houses over the State desire to have professional juvenile motion picture actors whose pictures are exhibited at their theatres, to make appearance at the theatres where the films are shown and these juvenile actors receive no compensation from the moving picture theatres and their object is possibly to advertise and popularize the films in which they appear which will later be shown at the theatres. In my opinion, the use of children for advertising purposes under such circumstances is contrary to the spirit and purpose of the law.

In other cases, children under sixteen years of age appear in amateur theatrical appearances, dancing and musical exhibition given under the auspices of music, dancing or dramatic instructors. In my opinion, where such performances are given to show to the parent or guardian or friends the advancement of a pupil, and as part of a teaching program, such performances are not within the prohibition.

With the foregoing in mind, from your statement of facts, it appears to me that the Ritz Theatre, by its advertisement of the child on its vaudeville bill, is exploiting the child for the gain of the theatre, and hence, commercializing it, and therefore, the act is in violation of the criminal laws of Alabama.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

October 21, 1930

The Superintendent of Education,
Abbeville, Henry County, Alabama.

Schools—Three mill district tax cannot be used to pay for transportation of school children out of that district nor to pay teachers salaries in another district.

Opinion by the Attorney General.

Dear Sir:

Please refer to your letter of January 22, 1930 to Hon. Charles E. McCall, Chief Examiner of Accounts, Department of Examiners of Accounts, which was referred to me by him on February 7, 1930 (Request No. 1961-198) and concerning which an opinion was written by Assistant

Attorney General Koonce on March 8, 1930. In your letter you state that there is a small three mill tax district in your county, which contains approximately thirty-five children of school age. You also state that you have abolished the school in that district because of the inadequacy of the building, and that the children are now being transported to another school, presumably in another tax district in Henry County.

You request my opinion:

> Under the circumstances above stated, is it legal to spend the special three mill district tax of said district in the payment of salaries of school teachers in the district to which the children are being sent to school and to pay the expenses of transporting said children from the tax district to the district in which they are being sent to school?

In my opinion, the special three mill district tax must be used for the exclusive benefit of the district in which levied and collected.

Opinions 1926-28, p. 173.

It is unlawful to use the special mill district tax to pay for transporting children from that district to another district for instruction. Likewise it is unlawful to use the special three mill district tax of one district to pay the salaries of school teachers teaching school in another tax district. This has been the uniform rule of this office, and the opinion of March 8, 1930 is in error and is hereby withdrawn and declared to be null and void.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

October 25, 1930

The State Superintendent of Education,
Montgomery, Alabama.

Schools—Use of Rural Library Fund in purchasing textbooks.

Opinion by Assistant Attorney General Koonce.

Dear Sir:

I have your letter of October 7, 1930.

You request my opinion:

Can the State Superintendent of Education legally approve applications of county boards of education for aid from the Rural Library Fund in the purchase of State adopted basal textbooks, which books are to constitute a part of the school libraries, and which are to be lent to pupils for use in their respective classes?

In my opinion, the State Superintendent of Education cannot legally approve the above applications unless such textbooks have been placed on the list of books which is prepared by the State Superintendent of Education with the advice of the Director of the Department of Archives and History, as outlined in Section 394 of the School Code of 1927.

Section 390 of the School Code of 1927, provides for a Rural Library Fund for the various counties of the State.

Section 394 of the School Code of 1927, contains the provision that the State Superintendent of Education with the advice of the Director of the Department of Archives and History, shall compile and publish a carefully selected and annotated list of books from which libraries shall be chosen, and such section contains the further provision that rules and regulations shall be adopted for the choice of books, their use, preservation and circulation, etc. In my opinion, said Section 394 gives the State Superintendent of Education and the Director of the Department of Archives and History full authority to compile a list of books from which the libraries referred to therein shall be chosen.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

October 27, 1930

The Chief Examiner,
Department of Examiners of Accounts,
CAPITOL.

Under Section 20 of Act No. 163, approved July 22, 1927, only one license should be issued by the judge of probate for one filling station run by a person, firm or corporation. This license should name the location, the number of pumps or fillers used, and the person, firm or corporation to whom issued.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Receipt of your letter of October 27, 1930 is acknowledged. You ask if it is permissible for a judge of probate to issue a separate license for each pump where application is for license under Schedule 79 of Section 333 of Tax Laws 1929 as compiled by contract with Attorney General.

In reply will say that the law referred to by you is the same as Section 20 of Act No. 163, approved July 22, 1927 (Acts 1927, p. 161).

Under this section, in my opinion, the legislature contemplated only one license for each filling station. Such license should be graded according to location and number of pumps or fillers in each filling station. Where there is only one filling station run by a person, firm or corporation, there should be but one license, which should name the location and the number of pumps or fillers to be used, and the person, firm or corporation to whom issued.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

October 28, 1930

The Judge of Probate,
Enterprise, Coffee County, Alabama.

Elections—Qualified electors cannot vote at other than legal polling place on election day.

Elections—Elector unable to attend polls on account of illness cannot cast absent ballot.

Elections—Election officers cannot leave polling place to solicit votes on election day.

Opinion by the Attorney General.

Dear Sir:

I have your letter of October 27, 1930. In it you request my opinion:

First. Has an election inspector the right under the law to leave the voting place at which he is an inspector at the coming general election and go to the home of an elector and procure the vote of such elector.

Second. In the event of the illness of an elector on election day, which elector resides within a reasonable distance of the voting place of such elector, can an inspector or clerk of such voting place legally go to the home of the elector and permit such elector to vote at home?

In answer to your first question will state that no election inspector or clerk of a voting place has the legal right to leave the voting place and go to the home of an elector and there procure the execution of a ballot to be cast in the coming general election.

In answer to your second question will state that no election inspector or clerk has a legal right to absent himself from the polling place where he has been appointed to act and go to the home of an elector and permit such elector to execute a ballot at home because of illness of such elector.

Any inspector or clerk appointed to act at the general election to be held in November, 1930, who does the above is guilty of a gross violation of the election laws of Alabama. Ballots so executed should not be permitted to go into the ballot box. An election officer who leaves the place where he was appointed to act and proceeds to the home of an elector and procures or there permits the execution of a ballot is subject to immediate arrest and to prosecution for violation of the election laws.

Absent ballots can only be procured by qualified electors upon their own written applications made to the probate judge not more than thirty days nor less than five days before the general election. The probate judge can legally furnish absent ballots only in the manner provided by Article 4 of Chapter 19, Code of Alabama, 1923. The probate judge cannot furnish an absent ballot to a qualified elector except that such elector is absent from the State or from the county in which he is a qualified elector, by reason of his regular business and in the performance of his regular duties. A mere purpose to be absent from his polling place on election day is not a sufficient basis for an elector to procure an absent ballot. It must be his purpose to be absent from the county or the State on that day by reason of his regular business and in the performance of his regular duties. There is no intimation in Article 4, supra, that absent ballots therein provided for may be cast other than after a strict compliance therewith.

An examination of other Sections of the Code of Alabama, 1923, pertaining to the conduct of general elections, indicates clearly that, except for absent ballots provided for under Article 4 of Chapter 19 of said Code, all voting and execution of ballots shall be done in the polling place at which the elector is qualified to vote, and then only in the manner provided by law.

In this connection see Sections 450, 486, 489, 490, 491, 493, 494, 444, 498, 499, 599, 600, 3906, 3919, 3898, 3932, and 3937, Code of Alabama, 1923.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

October 29, 1930

Hon. Robt. A. Beeland, Jr.,
County Treasurer of School Funds,
Greenville, Butler County, Ala.

County Treasurer of School Funds—no pay for service as.

Opinion by the Attorney General.

Dear Sir:

I have your letter of October 27, 1930, stating that you are County Treasurer of school funds of Butler County, Alabama, and that in such capacity you have a large amount of clerical work to do which you describe and which you state is rather burdensome for the compensation received by the Bank as interest on daily balances.

You request my opinion:

> Can the County Board of Education legally employ a clerical assistant to the County Treasurer of School funds, either as a whole time or part time employee, and pay such assistant a monthly salary to keep all of the books, accounts and collections in order, and to make up monthly pay rolls and reports and to see that the disbursements are legal and correct and that the checks covering pay rolls and accounts are properly forwarded to the teachers and creditors?

In answer will state that the County Board of Education has no such authority. Section 94, Alabama School Code 1927, provides that the County Treasurer of School Funds shall serve without pay.

Section 298 requires such Treasurer to execute bond and the premium thereon shall be paid by him and not by the County Board. Section 295 describes in part the duties of the County Treasurer of School Funds. No provision having been made by law, for payment of compensation to you directly, such could not be done indirectly. You take the office cum onere, and the County Board of Education has no legal right to use the school funds of the County to pay one to perform your duties.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

October 29, 1930

Hon. O. C. Oakley,
Tax Collector,
Centreville, Bibb County, Ala.

Elections—Only the person who is to cast the ballot can make application to the probate judge for an absent ballot.

Opinion by the Attorney General.

Dear Sir:

I have your letter of October 27, 1930. In it you state that your son is now located at Jasper, in Walker County, Alabama, that he is a qualified elector of Bibb County, Alabama.

You request my opinion:

Can I legally make application to the probate judge of Bibb County for an absent ballot to be sent to my son, and is it legal for the probate judge of Bibb County to furnish my son with the absent ballot when he has not made the application himself?

In answer will state that you cannot make the application for the absent ballot for your son, nor can the probate judge legally deliver the ballot to your son when the application is made by you. Your son, in order to cast an absent ballot, must comply strictly with the law on the subject and make his own application in writing over his signature to the probate judge not more than thirty days nor less than five days before the general election day, and the probate judge must be satisfied that the application is genuine, and must then file the application, and make from all applications on file a list which he must preserve for a certain period of time after the election. He must also make a list of absent ballots returned and must preserve this list for a certain period of time after the election. Both lists are subject to public inspection.

The above is in accord with the opinions heretofore rendered by this office.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

October 30, 1930.

Mr. A. B. McMillan,
Election Inspector, Precinct No. 7,
Montgomery, Montgomery County, Ala.

Elections—Absentee Voter's Law.

Opinion by the Attorney General.

Dear Sir:

I have your letter of October 30, 1930. You state that you are an election inspector at Box 4, Precinct 7 in Montgomery County, Alabama, for the General Election to be held November 4, 1930. You further state the following:

"I understand the practice prevails in some counties, of delivering these absentee ballots to the different polling places in the county in various ways other than by the Probate Judge or some one deputized by him. Sometimes these absentee ballots come to the different polling places in the ballot boxes provided for the different precincts in the county and are found in the ballot boxes by the election officers when the ballot boxes are opened on the morning of election.

"I understand also that the practice prevails in some counties of receiving and depositing the challenged absentee ballot without the oath of the voter and the oath of some identifying householder and freeholder as required by sections 498, 499 and 500 of the Code."

You invite attention to Article IV and XI of Chapter 19, Code of Alabama, 1923.

You request my opinion:

1. When and how should the absentee ballots be delivered to the election officers.

2. What is the proper procedure in challenging the absentee ballot?

3. Is an election officer who refuses to lay aside a challenged absentee ballot which is not supported by the oaths provided in Section 498, 499 and 500 of the Code and who insists on recording and depositing said ballot, guilty of such a violation of his oath and the election laws as would call for his arrest on election day and then and there during the progress of the election?

4. If the sheriff should refuse to arrest an election officer for the offense set out in question three above, would the sheriff be guilty of any offense and if so, what would be the proper procedure of those challenging the absentee ballot?

In answer to your first question will state that the provisions of Section 406, Code of Alabama, 1923, should be strictly complied with. Said Section of the Code provides, among other things, "that the Probate Judge, upon receipt of the absent ballot, shall endorse on the envelope, over his signature, the date and hour of the receipt thereof by him, and shall safely keep the said ballot, without breaking the seal of said envelope and deliver the same on election day, and **during the time the polls are open,** to the officers of election at the voting place of said absent voter, **when and where** said election officer shall open said envelope, * * * * *." You will observe from the foregoing that the Probate Judge must deliver the envelope containing the absent ballot during **the time the polls are open.** Section 486 specifies the time when the polls are open and how long the polls must be kept open. Therefore, the Probate Judge must deliver such absent ballots during that time and not before that time and not after that time. The method of delivery is not provided, but the Probate Judge is charged with the duty of seeing that such ballots are safely delivered at the time the law requires same to be done.

In answer to your second question, will state that Section 406, Code of Alabama, 1923, provides that when an absent ballot is properly delivered to the election officers, in the event the name of such absentee voter appears on the official list of qualified voters, as a qualified voter for the county and the precinct or district, such election officers shall, after opening the envelope and ascertaining the above facts, check his name off of such official voting place and cause the said ballot to be **duly and properly recorded,** subject, however, to challenge, "as in other cases provided for," and the same shall be handled in all respects as if the said absentee voter were present and voted in person. Sections 497, 498, 499, 500, 501 and 460, constitute the "other cases provided for," and the law relating to when, where, by whom and in what manner a vote may be challenged. Section 185, Constitution of Alabama, 1901, should also be considered. It reads as follows:

> "Any elector whose right to vote shall be challenged, for any legal cause **before an election officer,** shall be required to swear or affirm that the nature of the challenge is untrue before his vote shall be received * * * ."

Article VIII, Constitution of Alabama, 1901, (Sections 177-196), deals with those who are qualified and disqualified to participate in an election as voters. The Legislature cannot legally pass an Act, the effect of which would set at nullity the provisions of Section 185 of the Constitution, supra, which provides when, where and by whom and before whom and for what cause one's right to vote shall be challenged. It was because of the constitutional requirements, no doubt, that the Legislature put the expression in the last sentence of Section 406 as to absent ballots "subject, however, to challenge as in other cases provided for * * * * * " You will observe that Section 185, Constitution of Alabama, 1901, supra, deals specifically with a challenge "before an election officer." The fact that an absent voter executes the oath set forth in Section 410, required of all

absent voters, does not exempt him from the provisions of Section 185 of the Constitution. Therefore, if, after his ballot has been received by the election officers, and the envelope opened, and the ballot duly and properly recorded, his vote is challenged "before an election officer," then, under Section 185 of the Constitution, such absent voter must take the challenge oath set forth in Section 498 of the Code and support it with the oath set forth in Section 499 of the Code, or else, under Section 185 of the Constitution and Section 500 of the Code, his ballot must be rejected and laid aside by the inspectors. It may be contended that the oath under Section 410 is a compliance with the Constitution, but it is not for the reason that it is not taken "before an election officer" at the box at which his ballot is to be counted. Any attempt on the part of the Legislature to provide by statute, a method contrary to Section 185 of the Constitution, would be clearly unconstitutional and would render such portions of an absentee ballot unconstitutional. Of course, no one's ballot can be challenged except for a legal cause.

In answer to your third question, will state that it is clearly answered by Section 3920, Code of Alabama, 1923, and any inspector who violates the provisions of that Section of the Code is, under Section 192, Constitution of Alabama, 1901, not privileged from arrest therefor on election day, if, in the commission of the act, he commits a breach of the peace. Section 192 of the Constitution, supra, governs as to privileges from arrest of election officers during their attendance at elections or while going to or returning therefrom.

In answer to your fourth question, will state that if the sheriff wilfully fails or refuses to perform the duties required of him under Section 502, Code of Alabama, 1923, he is guilty of a violation of Section 3903, and subject also to impeachment proceedings, and any lawful officer, who, under the laws of Alabama, has authority to execute the criminal laws of the State in the locality by making arrests, can arrest such persons as are not privileged from arrest as hereinbefore stated.

I invite your attention also to Section 3267, Code of Alabama, 1923, which is as follows:

> "3267. When private persons may arrest.—A private person may arrest another for any public offense committed in his presence; or where a felony has been committed, though not in his presence, by the person arrested; or where a felony has been committed, and he has reasonable cause to believe that the person arrested committed it; and an arrest for felony may be made by a private person on any day and at any time."

Of course this must be read in the light of the constitutional provision, supra, as to who are privileged from arrest on election day, and the exempted offenses.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

November 1, 1930

Mr. W. V. Jacoway,
Chairman, Democratic Campaign Committee,
Fort Payne, DeKalb County, Alabama.

Judge of Probate must make list of qualified voters as provided by Section 387 of the Code as amended by Act No. 289, as approved August 20, 1927, and furnish the lists to election managers.

List prima faci evidence of qualification. A qualified voter whose name has been left on the list and not restored, may, nevertheless, cast his vote by complying with Sections 498 and 499 of the Code of Alabama, 1923.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Receipt of your letter of October 25, 1930, is acknowledged. You make the following statement of facts:

> The voting list provided by law to be prepared by the Probate Judge of the County by Section 387 of the Code of 1923, as amended by Act No. 289, approved August 20, 1927, was prepared and published as provided by law, except that hundreds of qualified voters were left off the list. These voters had paid their poll tax, but the Judge of Probate, not having proof thereof for the year 1901 and some others, left the names off the list of qualified voters. Such voters failed to have their names restored to the list of qualified voters as provided by said amended Section.

You state that the Judge of Probate sent to every box in the County a copy of the poll list as will be used on election day and certain ones are going over it and certain ones left off the list are coming to the courthouse with evidence of their qualification and securing from the Probate Judge certificates to the effect that they are qualified voters in box so and so in the County.

You ask to know the rights of qualified voters whose names have been left off the list by the Probate Judge.

In reply will say that every person who is a qualified voter duly registered may vote whether his name is on the list of voters furnished by the Judge of Probate or not. The list furnished by the Judge of Probate is **prima facie** evidence of the qualifications of the voter.

In reply will say that the Judge of Probate is required by Section 387 of the Code of 1923, as amended by Act No. 289, approved August 20, 1927 (Acts 1927, p. 275 et seq.) to prepare and advertise a corrected list. The qualified voter whose name has been left off the list may, dur-

ing ten days have his name restored to the list. If one fails to have his name restored to the list, if he is a qualified voter, he or she may vote.

By Section 497 of the Code, the inspectors of the election shall appoint one of their number to act as challenger. Such challenger is required by said Section to challenge the vote of any person whose name does not appear upon the list of voters furnished. If such person is a qualified voter he or she has the right to take oath before one of the inspectors provided by Section 498 of the Code. In addition to such oath the inspectors must require also the oath of some competent person required by Section 499 of the Code.

Section 500 and 501 of the Code must also be noticed. All of these Sections must be complied with before the vote can be cast. These Sections can easily be complied with by any qualified voter, although his name was left off the list prepared by the Judge of Probate. When he or she has so complied, such person may legally cast his vote.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

November 14, 1930

Hon. W. A. Crowell,
Deputy Sheriff, Colbert County,
Tuscumbia, Ala.

Malicious injury to property.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of September 9, 1930 in which you request my opinion as follows:

> Is it a violation of the law and can a person be prosecuted for defacing or mutilating a motor number on the motor of an automobile?

In reply will state that it is a violation and can be prosecuted under Section 3212, Code of Alabama, 1923. There was a special statute in the Code of 1923, Section 3554, which covered this matter, but this was repealed by an Act of the Legislature approved January 28, 1927, (General Acts of Alabama, 1927, p. 21). I am unable to find where this or a similar statute has been reenacted. Therefore, it reverts back to the general statute covering matters of this kind, which is Section 3212, supra.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

November 14, 1930

The Tax Collector,
Cullman, Cullman County, Alabama.

Tax sale—mortgage holder of personal property cannot redeem.

Opinion by Assistant Attorney General Brassell.

Dear Sir:

I have your letter of May 31, 1930, in which you state that you have advertised for sale a saw mill, boiler, engine and shingle mill for real and personal property tax due by the person owning the described property.

You request my opinion:

> Can a mortgagee who holds a mortgage on the boiler (which is not recorded) pay the tax and cost on the boiler and release it from the tax sale?

In answer to your question, I am of the opinion that the mortgagee of personal property whether recorded or not, cannot pay the tax on the boiler and have the same separated and released from the lien for taxes.

Section 3059, Code of Alabama, 1923.

It is to be observed that only holders of liens on real estate can pay the pro rata share of the tax. There is no provision of law authorizing a mortgagee or other lien holder of personal property to separate the taxes and pay a portion thereof.

It is the duty of the tax collector to first exhaust the personal property for the non-payment of taxes before a sale of the real estate can be had. Therefore, it is your duty to proceed to sell the property as advertised by you for the payment of the taxes.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

November 14, 1930

The State Tax Commission,
CAPITOL.

License—Beauty shop cannot be required to pay license as barber shop.

Opinion by Assistant Attorney General Patrick.

Gentlemen:

I have your letter of October 10, 1930.

You state that the only license at present levied and collected on beauty shops in this State is that levied and collected on hair dressers and manicurists. You further state that the only thing done by barber shops now that is not done by beauty shops is to shave persons.

You request my opinion:

Whether the operator of a beauty shop should be required to obtain a barber shop license?

My answer is no.

On January 16, 1930, I wrote an opinion in which I stated that one giving permanent waves is liable for license as a hair dresser under Schedule 132 of Section 334, Revenue Laws of Alabama, (Acts 1929, p. 282, Section 361, Schedule 77).

Opinion Attorney General (Book 16, p. 65, office edition).

But it is not my opinion that a **beauty shop** should be extended so as to also mean barber shop.

A barber is defined by Webster as one whose profession it is **to shave or to trim the beard and** to cut and dress the hair of his patrons.

Webster's International Dictionary.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

November 14, 1930

The County Solicitor,
Troy, Pike County, Ala.

Peddlers—License for.

Opinion by Assistant Attorney General Brassell.

Dear Sir:

I have your letter of October 1, 1930.

You request my opinion:

Is a person liable for peddler's license who takes orders for patent medicine, sends the orders to an out of the state factory and the goods are sent to him; he takes the goods, makes deliveries upon the original orders and collects the purchase price?

In answer to your question, I am of the opinion that under the state of facts such person is not liable for a peddler's license.

Wright v. State, 8 Ala. App. 437;
Ballard v. Wrought Iron Range Company, 81 So. 429;
Biennial Report of Attorney General, 1926-28, p. 546.

Upon the statement of facts submitted by you, the agent delivering the patent medicine previously ordered and shipped from the manufacturer in another State, and not resold, is engaged in Interstate Commerce, and need not have a peddler's license for selling and delivering medicine.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

November 18, 1930

The Judge of Probate,
Greenville, Butler County, Ala.

Claims against county—barred within twelve months if not presented, unless it be the claim of a lunatic or minor, in this instance it is barred within twelve months after removal of such disability.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of November 1, 1930 in which you state that some time during the year 1925, the Commissioners Court of Butler County authorized the purchase of an automobile to be used by the probate judge, who was ex-officio chairman of the board of commissioners, in his supervision of the public roads of the county. Judge Winkler was probate judge at the time, and had an automobile which he traded in, and is said to have been given an allowance of $200 trade-in-value, which was never paid to Judge Winkler, but the commissioners court simply paid the difference between the trade-in-value and the new automobile which was bought for the county. Subsequent to the time when the first automobile was bought, the commissioners court traded automobiles several times, and at the time of Judge Winkler's death the county owned an automobile which was used by him. Judge Winkler died in August of this year,

and his widow contends that the commissioners court is due her, or the administrator of his estate, the sum of $200.00 representing the trade-in-value of the automobile which Judge Winkler traded in at the time the original automobile was bought for the county in 1925.

You request my opinion:

Can the commissioners court of Butler County pass this claim for payment under the facts stated above?

In reply will say that it cannot if this is the first time this claim has been presented to the commissioners court for payment, as it is barred by the statute of limitations of one year under Section 228, Code of Alabama, 1923. This section reads as follows:

"Claims Barred if Not Presented.—All claims against counties must be presented for allowance within twelve months after the time they accrue, or become payable, or the same are barred, unless it be a claim due to a minor, or to a lunatic, who may present such claim within twelve months after the removal of such disability."

Yours truly,
CHARLIE C. McCALL,
Attorney General.

November 22, 1930

The State Auditor,
CAPITOL.

The time of filing the bond of the tax assessor and of the tax collector of counties elected at the General Election on November 4, 1930, will be on or before Sept. 1, 1931.

Opinion by Assistant Attorney General Evans.

Dear Sir:

This acknowledges receipt of your letter of September 27, 1930. You ask my opinion as to when the bond of tax assessor and the bond of tax collector, elected at the General Election, November 4, 1930, must be filed in the office of the Auditor of the State of Alabama and of the Judge of Probate of his county.

In reply will say that the time and place of the filing of the bond of tax assessor is governed by Section 3038 of the Code of Alabama, 1923, and the time and place of filing the bond of the tax collector, is governed by section 3046 of said Code.

These sections of the Code of 1923 take priority over and modify Section 2605 of the Code of 1923. The provisions of Section 2605 of said Code was enacted many years prior to the enactment of the provisions of Sections 3038 and 3046 of said Code.

The provision of Section 2605 of the Code that applied before the approval of the Revenue Act 1919, (Acts 1919, p. 282 et seq.) on Sept. 15, 1919, to the time of filing the bonds of tax assessors and tax collectors, was repealed by implication, by the provisions of Sections 35 and 192 of said Act.

As the law now stands in Sections 3038 and 3046 of the Code, the time of filing the bonds of tax assessors and of tax collectors, elected at the General Election of November 4, 1930, will be on or before Sept. 1, 1931. The term of office of the tax assessor, by Section 3037, and of the tax collector by section 3045 of the said Code, begins the first day of October, 1931.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

November 25, 1930

The County Superintendent of Education,
Clanton, Chilton County, Alabama.

County Board of Education—Members not entitled to expense for more than twelve meetings per year.

Opinion by Assistant Attorney General Cobb.

Dear Sir:

I have your letter of November 10, 1930, in which you state that you find it necessary to hold more than twelve meetings per year for the County Board of Education. Section 92, Article 6 of the School Code of 1927 provides that the members of the County Board of Education shall receive from the public school funds of the county $5.00 a day and their actual traveling and hotel expense incurred in attending meetings of the Board and transacting business of the Board. The members of the County Board shall not be allowed pay for more than twelve days in any one year and their expenses shall be paid in like manner as provided for the compensation of teachers.

You request my opinion:

Whether or not the board members are entitled to their expenses when it is necessary to hold more than the twelve meetings as pro-

vided in the section referred to. Of course I understand that their salary of $5.00 per day can be paid for only twelve meetings of the board?

Answering your inquiry I am of the opinion that the members of the County Board of Education are entitled to pay and expenses for only twelve days in any one year. While Section 92 of the Alabama School Code, 1927, provides that the members of the County Board shall not be allowed pay for more than twelve days in any one year, I am of the opinion that it was clearly the intention of the Legislature that the County Board could only receive $5.00 a day compensation, and expenses, for only twelve days in any one year.—See Report of Attorney General 1926-1928, pp. 299-300.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

November 26, 1930

The Chairman,
State Tax Commission,
CAPITOL.

Attention: Mr. John S. Mooring.

Auctioneers—Transient, itinerant, or trader—license required.

Opinion by Assistant Attorney General Brassell.

Dear Sir:

I have your letter of December 18, 1929, in which you request me to construe Schedule 2 of an Act approved September 15, 1919 (General Acts, 1919, p. 396).

You request my opinion:

Can Subdivision E apply to all persons who are regularly engaged in the auctioneering business even though an itinerant?

In answer to your question, I am of the opinion that Schedule 2 of the License Schedule and particularly the first part thereof levies a license on auctioneers who are regularly engaged in the auctioneering business and that cities are used as a basis of classification and if the auctioneer takes out a license to do the business of auctioneering in the city of A which comes within a prescribed population he would, if he conducted the business of auctioneering in another city, have to take out another license within the particular classification of population.

Subdivisions A, B, C and D exempt from the payment of the license while Subdivision E of Schedule 2 levies a license upon each transient or itinerant auctioneer **or trader or dealer in goods,** wares or merchandise other than licensed peddlers.

It is to be observed that an auctioneer is a person who auctions the goods of another and whose business is that of auctioneering and for which a license is required while Subdivision E of Schedule 2 levies a license upon the doing of a different sort of business. The persons whom said Schedule E covers are persons who are trading in their own goods and said Subdivision E is designed to levy a license on such persons and the license is required to be paid in any city or town or county where such person attempts to engage in the business of itinerant auctioneers or traders or dealers in goods, wares, or merchandise.

General Acts of Alabama, 1919, Section 2, p. 396.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

November 28, 1930

The State Tax Commission,
CAPITOL.

License Tax: Construing Subdivision 2-J, Subdivisions (d) and (h) of Section 2 of Act approved July 22, 1927 (Acts 1927, pages 142, 143, 144, 145.)

Opinion by Assistant Attorney General Cobb.

Dear Sir:

I have your letter of October 30, 1930, in which you refer to subdivision 2-J, subdivisions (d) and (h) of Section 2 of the Revenue Act of 1927 (Act approved July 22, 1927, Acts 1927, pp. 142, 143, 144, 145).

Subdivisions 2-J of Section 2, supra, reads as follows:

"2-J. Every person, firm, company, corporation or association of persons, who sells cigars, cigarettes, cheroots, or any substitute therefor, within the State of Alabama, shall pay to the State for State purposes only, a license or privilege tax of an amount equal to fifteen per cent (15%) of the wholesale sales price of such cigars, cigarettes, cheroots, or any substitute therefor sold within this State; provided that if any person, firm corporation or association of persons shall include in any sale of goods, wares or merchandise, any cigars, cigarettes, cheroots, or any substitute therefor enumerated

herein, or shall give with the purchase of any goods, wares or merchandise any cigars, cigarettes, cheroots, or any substitute therefor enumerated herein, there shall be paid as a license or privilege tax hereunder an amount equal to fifteen per cent of the amount for which such goods, wares or merchandise is sold."

Subdivision (d) and (h) of Section 2, supra, read as follows:

(d) All payments of the taxes herein imposed shall be made to the State Tax Commission of Alabama, at Montgomery, Alabama, with check or draft made payable to the State Treasurer of Alabama which payment shall be made on or before the tenth day of each month for the taxes due under the provisions of this section for selling or otherwise disposing of any cigars, cigarettes, cheroots, or any substitute therefor, during the next preceding month. Provided the wholesale dealer may make reports and payment of the tax quarterly, instead of monthly. Provided however that the Tax Commission may credit the final annual report of any wholesale dealer with the licenses paid on uncollectible sales made by said dealer and upon which the license was paid.

(h) Every person, firm, corporation or association of persons who sells or deals in cigars, cigarettes, cheroots, or any substitute therefor as defined herein, within the State of Alabama, or who gives away or includes any such cigars, cigarettes, cheroots, or any substitute therefor in the sale of any goods, wares or merchandise for the purpose of evading, or with the intent to evade the payment of the tax imposed by this section, shall, when such cigars, cigarettes, cheroots, or any substitute therefor, are sold to retail merchants or other persons for resale within the State of Alabama, make and deliver to the persons to whom any such cigars, cigarettes, cheroots, or any substitute therefor, are sold or delivered, an invoice or bill showing the price for which such articles are sold and shall also enter on said invoice or bill the amount of tax required to be paid to the State of Alabama under provisions of the section, and if the tax has been paid, it shall be so stated or entered on such invoice bill, or if the person making the sale or delivery of any cigars, cigarettes, cheroots, or any substitute therefor herein defined, elects to assume the payment to the State of the tax required by this section, it shall be so certified to on such invoice or bill. It shall be a violation of this section to enter on any invoice or bill any false statement, made with the intent to evade the payment to the State of the tax imposed under this section. Any person making such false statement or entry on any invoice or bill of cigars, cigarettes, cheroots, or any substitute therefor, shall be guilty of a misdemeanor, and on conviction therefor, shall be punished by fine or imprisonment, or both, as set out in subsection (f) of this Section.

You state in your letter that under Section H, wholesalers are given the right to assume the tax. Section D provides that the State Tax Com-

mission **may** credit the final annual report of any wholesale dealer with the licenses paid on uncollectible accounts made by said dealer and upon which the license was paid.

You request my opinion:

(1) Does the word 'may' make it mandatory on the State Tax Commission to credit the wholesaler with the tax due the State on uncollectible accounts, in all cases?

(2) Is such crediting left to the discretion of the State Tax Commission?

(3) Can the State Tax Commission in its discretion refuse to credit the wholesaler with any uncollectible accounts?

The answer to your first question is in the affirmative.
The answer to your second question is in the negative.
The answer to your third question is also in the negative.

Under the provision of subsection 2-J, supra, a tax of fifteen per cent of the wholesale sales price is laid on every person, firm, company or corporation who sells cigars, cigarettes or cheroots within the State of Alabama. This is primarily a tax on the retailer but under the provisions of subsection (h), supra, the wholesaler is given the right to assume this tax, and under subsection (d), supra, the State Tax Commission **may credit** the final annual report of any wholesale dealer with the license paid on uncollectible sales made by said dealer upon which he has paid the license.

From the foregoing, it is clear that the matter of assuming this tax by the wholesaler is purely optional. He may or may not assume the tax. If he does not assume the payment, then the tax is collected from the retailer. If he assumes the tax and has paid the same to the State as shown by previous reports, then upon making his final annual report, he is entitled to credit on sales made by him to the retailer for the amount of tax on uncollectible accounts. The question of what are uncollectible accounts is one for the determination of the State Tax Commission.

If upon investigation, the Tax Commission decides that the account is uncollectible, then it becomes its duty to credit the wholesaler with the proper amount of the license paid by said wholesaler on uncollectible sales made the retailer. When the wholesaler has in good faith made a sale to the retailer, has assumed and paid the license, and the account proves uncollectible, on the rendition of the wholesaler's final annual report to the Tax Commission, it becomes the duty of said Tax Commission to allow the credit on these uncollectible sales.

Further referring to your second question, after the State Tax Commission has determined that an account is uncollectible, it has no discretion as to allowing the credit mentioned.

With further reference to your third question, the State Tax Commission cannot refuse to credit the wholesaler with the proper amount of the license on uncollectible accounts.

The words "may credit" as used in subsection (d), supra, leave no discretion with the Tax Commission when the wholesaler has voluntarily assumed payment of the license, and the Tax Commission has determined the question of the collectibility of the account.

> "b. Construction of particular Language. As a general rule the word 'may' when used in a statute, is permissive only and operates to confer discretion while the words 'shall' and 'must' are imperative, operating to impose a duty which may be enforced. These words, however, are constantly used in statutes without regard to their literal meaning; and in each case are to be given that effect which is necessary to carry out the intention of the legislature as determined by the ordinary rules of construction. Thus the word 'may' should be construed to be mandatory whenever the public or individuals have a claim de jure that the power conferred should be exercised, or whenever something is directed to be done for the sake of justice or the public good;"
>
> 36 Cyc. 1160;
> Mitchell v. Duncan, 7 Fla. 13;
> People v. Buffalo County 4;
> Ex parte Banks, 28 Ala. 28;
> Shackleford v. State, 204 Ala. 362, 363.
> Binder v. Langherst, 234 111, 583, (85 N. E. 400)

I am, therefore, of opinion that it was the intention of the legislature that the State Tax Commission be required to credit the wholesaler with the license paid on uncollectible accounts upon the wholesalers rendering his final annual report.

In other words when the wholesaler has assumed and paid the license, the crediting of the final report with the license on uncollectible accounts is not left to the discretion of the Tax Commission and said Commission cannot refuse to give such credit on uncollectible accounts.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

November 28, 1930

The Judge of Probate,
Russellville, Franklin County, Ala.

License Inspectors—Citation fee—Service of citation—License Inspector not entitled to fee of $1.50 for mailing citation notice.

Opinion by Assistant Attorney General Patrick.

Dear Sir:

I have your letter of November 17, 1930.

You request my opinion:

> Whether a License Inspector is entitled, under Section 339, Revenue Laws of Alabama, 1929, to a fee of $1.50 for mailing citation notices, instead of personally serving same upon persons delinquent in the purchase of automobile tags.

It is my opinion that he is not. As a part of the Revenue Laws of Alabama provision is made for a license inspector and in defining his duties and providing for penalties and fees to be paid to him, on page 139, Section 72 of the Acts of 1927, we find this language:

> "All citations to delinquents shall be **served** by any **lawful officer,** or by the **license inspector** or his **deputy,** who shall be allowed as a fee, one dollar and fifty cents for each citation served, to be taxed against the delinquent."

On January 30, 1929, I wrote an opinion in which I stated that when the License Inspector has notified the Judge of Probate of the delinquency and has cited the delinquent to appear and show cause why he has not paid his license he is entitled to the fifteen per cent penalty and the $1.50 named in the Act.

Opinion Attorney General, Book 9, p. 129, (office edition).

On November 23, 1927, I stated the same in an opinion then rendered.

Biennial Report Attorney General, 1926-1928, p. 315.

But there must be citation such as is actual and can be shown. Even in civil actions leaving copy of summons and complaint at the defendant's home will not support a judgment in Alabama.

Burt v. Frazer, 47 Sou. 572, 157 Ala. 574.
Barton v. Burton Mfg. Co., 79 Sou. 664, 202 Ala. 180.

It must rise to the dignity of some manner of judicial process. Judicial process is a means whereby courts compel the appearance of parties, or compliance with its commands, and includes a summons.

Ex parte Hill, 51 Sou. 786, 165 Ala. 365.

There is no statute in Alabama providing such force for the mere mailing of citation notices for persons delinquent in the purchase of automobile

tags, and it is my opinion that before the $1.50 referred to can be properly claimed and collected personal service must be had.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

December 1, 1930

The Chairman,
State Tax Commission,
CAPITOL.

Replacement tags on automobiles—when proper to issue.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I am in receipt of your letter of June 16, 1930, in which you state that Section 24 of the Motor Vehicle Act of 1923 is in part as follows:

> "In case the tag becomes mutilated beyond recognition the owner of the motor vehicle may file with the State Tax Commission an affidavit setting forth the fact that the tag has been lost, mutilated or destroyed, and upon the payment of one dollar, there shall be issued to him by said Commission a new tag."

You request my opinion:

> We would like to have your opinion as to whether or not under the Section referred to above, the State Tax Commission has authority to issue replacement tags in cases where the original tag has been lost or stolen, and where there has been no mutilation of the tag?

Construing that part of Section 24 of an Act approved Sept. 23, 1923, (General Acts 1923, p. 292), as quoted above, it is my opinion that the construction the Commission has heretofore placed on same is correct. That is, where the affidavit shows that the tag has been mutilated beyond recognition, lost or destroyed, that it is the duty of the Commission, on the payment of $1.00, by the person making the affidavit to issue him a new tag.

I recognize that the part of Section 24, supra, quoted above, in the first instance states that "in case the tag becomes mutilated beyond recognition," etc., but the legislative intent was further revealed in the latter part of this clause where it sets out what must be placed in the affidavit

and states that it must set forth that the tag has been lost, mutilated or destroyed.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

December 2, 1930

The County Superintendent of Education,
Monroeville, Monroe County, Alabama.

County Board of Education—When newly elected members qualify and assume office.

Opinion by Assistant Attorney General Patrick.

Dear Sir:

I have your letter of November 10, 1930. You request my opinion:

1. When do the county board of Education members, elected in the last general election qualify and assume office.

There is nothing in the statutes stating at what time their offices begin.

Section 89, Alabama School Code of 1927, p. 45, reads as follows:

"89. County Board Members: When elected.—At the general election of State and County officers a member or members shall be elected for terms of six years to succeed the member or members whose term or terms of office expire at that time. The members of the County Board of Education shall hold office until their successors have been elected and qualified. Before exercising any authority or performing any duties as a member of the County Board of Education, each member thereof shall qualify by taking and subscribing to the oath of office prescribed by Article Sixteen of the State Constitution, the certificate whereof shall be filed in the office of the Judge of Probate of the County."

You will observe the words "to succeed the member or members whose term or terms of office expire at that time."

Section 91, Alabama School Code of 1927, page 45, reads as follows:

"91. Meetings of County Board.—The County Board of Education shall hold an annual meeting each year on the last Friday in November. At this meeting the Board shall elect each year one of its

members to serve as president and one to serve as vice-president. Other regular meetings shall be held on the last Friday of February, May and September, and such special meetings may be held, and at such place as the duties and business of the Board may require. The rules generally adopted by deliberative bodies for their government shall be observed by the County Board of Education. No motion or resolution shall be declared adopted without the concurrence of the majority of the whole Board."

Thus, as the Board must hold an annual meeting on the last Friday in November, under this Section, it is my opinion that the County Board of Education members should qualify and assume office as soon as their election is determined.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

December 2, 1930

The License Inspector,
Luverne, Crenshaw County, Alabama.

License Inspector—Fees and commissions.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of June 5, 1930, in which you state that you are License Inspector for your county.

You request my opinion:

(1) Am I entitled to the $1.50 penalty imposed on convictions for violating the motor vehicle law with reference to license?

(2) Am I entitled to arresting fee on alias capias where a forfeiture has been had? Also am I entitled to the fee for the service of notice of forfeiture on bail bonds, and also for service of subpoenas on witnesses?

(3) Has the license inspector the authority to cross over the county line just a few yards to serve a citation on the operator of a motor vehicle for failure to take out licenses where the operator resides in a different county from that of the license inspector?

Answering your first inquiry will say that I suppose you have reference to the citation fee of $1.50. You are entitled to this provided you

actually serve the citation. However, this may be served by any lawful officer or the license inspector himself.

Answering your second inquiry will say that the sheriff is the proper officer to serve all alias capias notices arising from forfeitures on bail bonds of any character. It is also the duty of the sheriff to serve all subpoenas for witnesses. This is not a part of the duties of the license inspector.

Answering your third inquiry will say that you are not concerned as license inspector with the failure of citizens in a different county than yours, to take out their license for the operation of automobiles. You have no jurisdiction outside of your own county, and, therefore, it would not be proper for you to cross the line to make such service.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

December 2, 1930

The Tax Collector,
Hamilton, Marion County, Ala.

Tax Collector—How refunded for money erroneously paid the treasurer of public school funds.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of November 10, 1930, in which you request my opinion as follows:

Please advise me how the Tax Collector can be refunded money erroneously paid the treasurer of public school funds?

It happens that the disposition of like matters has come under the consideration of the Department of Examiners of Accounts in numbers of counties of the State, and the correction of errors of this kind has uniformly been had in the following way:

Where a Collector has overpaid the county wide school tax to the treasurer of county school funds his name should be put on the pay roll by the county superintendent of education for disposition by the county treasurer of the amount of the county wide tax which such collector has overpaid.

In cases of overpayment of taxes to the county treasurer of school funds for the credit of special school districts of the county, the tax col-

lector's name should be put on the pay roll for payment from the particular funds of the school district to which he has made such overpayment.

For your information, I will state that Examiners of Accounts very frequently find that Tax Collectors have overpaid some school districts and have underpaid other school districts, and the method of determining such matters is to have the collector make payment to the treasurer of school funds for the districts to which he is due taxes, and to have his name placed on the pay roll by the county superintendent of education for refund of taxes overpaid in such districts to which he has made overpayments.

Of course, such payments are brought to the attention and consideration of the County Board of Education as other items on the pay roll are supposed to be considered by said Board.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

December 2, 1930

The Chairman,
State Tax Commission,
CAPITOL.

Bonds: Alabama Bridge Corporation bonds are not bonds of the State of Alabama.

Opinion by Assistant Attorney General Cobb.

Dear Sir:

I have your letter of November 8, 1930, in which you state that Section 25 of House Bill 359 approved July 22, 1927, contains the following provisions:

> "In arriving at the value of the shares of the stock of a corporation organized under the laws of Alabama for the purpose of conducting an insurance business, there shall be deducted from the value of such shares, in addition to the assessed value of its property, (the amount of its bonds of the State of Alabama, or bonds of any county or municipality thereof, and of the United States), held by such insurance corporation at the time of such assessment, which said bonds were held during all the six months preceding such assessment."

You request my opinion:

> Whether or not bonds issued by the Alabama Bridge Corporation come within the classification of the bonds permitted to be deducted by do-

mestic insurance companies from their capital stock by the above provision?

Answering your question, bonds of the Alabama Bridge Corporation do not come within the provisions of the above quoted Section, and cannot be deducted from the value of the shares of such domestic insurance companies in arriving at the value of said shares for the purpose of taxation.

There are only four different kinds of bonds to be deducted from the value of shares of stock in domestic corporations in arriving at the value of such shares for the purpose of taxation, viz: Bonds of the State of Alabama, bonds of any county or municipality thereof, and United States Bonds.

Certainly it cannot be said that bonds of the Alabama Bridge Corporation are bonds of any county or municipality thereof, or that they are United States Bonds. This being true, the only remaining question is: Are the bonds of the Alabama Bridge Corporation bonds of the State of Alabama within the meaning of Section 75, supra?

I am of the opinion that the bonds of the Alabama Bridge Corporation are not bonds of the State of Alabama. The above quoted provision of Section 25 is an exemption and should be strictly construed, and under such strict construction bonds of the Alabama Bridge Corporation cannot be construed to be bonds of the State of Alabama, and, therefore, they should not be deducted.

The Alabama Bridge Corporation was duly incorporated under the provisions of an Act approved August 31, 1927 (Acts 1927, p. 278, et seq.). There is nothing contained in this Act which makes the bonds of the Alabama Bridge Corporation bonds of the State of Alabama. These bonds are not Alabama bonds for the reason that there is no promise on the part of the State of Alabama to pay these bonds in any event; there is no pledge of the general credit of the State; the bonds of the Alabama Bridge Corporation do not constitute a debt within the meaning of Section 213 of the Constitution of Alabama.

Alabama State Bridge Corporation et al v. Smith, 217 Ala. 311.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

December 2, 1930

The Chief Examiner,
Department of Examiners of Accounts,
CAPITOL.

Schools—Matriculation fees in Secondary Agricultural Schools.

Opinion by the Attorney General.

Dear Sir:

I have your letter of October 20th. You request my opinion:

Is there any law authorizing school officials to require pupils attending a State Secondary Agricultural School to pay a matriculation fee or other special fee?

In answer will state that I have carefully examined the statutes and I find no such authority by which those in charge of Secondary Agricultural Schools can require the payment of any fee from a pupil for attending same. Such schools are supported by appropriations from public funds.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

December 3, 1930

State Superintendent of Education,
CAPITOL.

Bonds—Bond of county treasurer of school funds may be reduced on approval of State Superintendent of Education.

Opinion by Assistant Attorney General Cobb.

Dear Sir:

I have your letter of November 13, 1930, in which you state that on September 25, 1928, the National Surety Company of New York executed a bond in the amount of $35,000.00 on behalf of J. D. Wright as Treasurer of Public School Funds of Conecuh County for a term of four years from the first day of October, 1928. The amount of this bond was fixed by the State Superintendent of Education and approved and filed by him in accordance with the law. The amount of the bond now appears excessive in consideration of the funds coming into the treasurer's hands. It is desired to reduce the penalty to $25,000.00.

You invite my attention to Sections 94 and 298 of Alabama School Code of 1927, and request my opinion:

What is the necessary legal procedure to follow in order to reduce this bond to $25,000.00?

Section 94 of the School Code, supra, provides among other things, for the selection by the County Board of Education of a suitable person to act as treasurer of all public school funds and prescribes his duties.

Section 298 of the School Code, supra, provides for a surety bond for the county treasurer of school funds in such sum as prescribed by the State Superintendent of Education, which said bond shall be approved by the State Superintendent of Education.

The County Board of Education simply selects the person to act as County Treasurer of Public School Funds. The State Superintendent of Education is the one who fixes the amount of the bond and approves it.

There is no special procedure provided for the reduction of said bond, and this is a matter which addresses itself to the sound discretion of the State Superintendent of Education. He is the officer who fixes the amount of the bond and approves it in the first instance, and if in the exercise of his discretion he sees fit to reduce the amount of the bond, he has the authority to do so. The County Treasurer of School Funds can have the first bond concelled with the approval of the State Superintendent of Education, and execute a new bond for such an amount and in such reputable surety company authorized to do business in Alabama as meets the approval of the State Superintendent of Education.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

December 8, 1930

The Superintendent of Education,
Wetumpka, Elmore County, Alabama.

Schools—County Board of Education not liable for labor and material furnished independent contractor in the absence of an agreement to pay for same.

Opinion by Assistant Attorney General Koonce.

I have your letter of September 11, 1930, in which you state that the County Board of Education entered into a contract with H. E. Hornsby for the construction of a school building in Elmore County, and that a bond was furnished for the amount of the contract. You further state that be-

cause of misrepresentations that were made to the Board of Education as to the worth of the individuals who signed the bond, it has now developed that there is some question as to whether or not the creditors who furnished material to the contractor are fully protected by the bond.

You request my opinion:

1. If it develops that the above creditors are not fully protected by the bond, is there any liability on the part of the County Board of Education for labor and material used in the building?

2. If the Board of Education is liable what funds can be used to pay for such labor and materials?

In my opinion there is no liability on the part of the County Board of Education for the labor and material used in the building unless the County Board of Education agreed to pay for it, or unless such labor and material were furnished to the contractor on the credit of the County Board of Education.

Report of Attorney General, 1926-1928, pp. 132, 200, 122.

The County Board of Education is given the right to sue, and the implied right to be sued, and to hold property in trust:

Kimmons v. Jefferson County Board of Education, 85 So. 774 (headnote 3)

Greeson Manufacturing Co. v. County Board of Education, 117 So. 163 (headnote 1).

Where material for use in the construction of a school building was furnished at the request of the County Board of Education and accepted and used for legitimate purposes entirely within the scope of the county board's authority, recovery can be had therefor, notwithstanding the failure of the board to adopt a resolution authorizing the contract; the duty to reimburse the material man arising not by virtue of contract but from the general obligation to do justice:

Greeson Manufacturing Co. v. County Board of Education, 117 So. 163 (headnote 2)

A county board of education has authority to enter into a contract for the erection of a school building, and to take a bond from the contractor for the protection of laborers and materialmen:

Jefferson County Board of Education for use of Benson Paint and Varnish Co., 119 So. 837, (headnote 2).

The court held in the case of Greeson v. County Board of Education of Elmore County, 129 So. 42, that if the County Board of Education accepted the labor and used it in the erection of the schoolhouse with the knowledge it was being furnished on the credit of the contractor, the board ought to pay for it. The facts in this case were that one McInish had a contract for the complete building, but the evidence shows that he could not perform the contract unless the board would render its help by purchasing the carload of lumber, the price of which was the basis of the suit.

An Act approved February 10, 1927 (School Code of 1927, p. 333) contains the provision that any person, firm or corporation entering into a contract with the State, or any county or municipal corporation for the construction of any public building shall be required to execute a bond for the faithful performance of the contract, and for the payment for labor and material, feed-stuffs and supplies.

Of course, the County Board of Education should have required Hornsby, the contractor, to furnish sufficient bond for the protection of laborers and materialmen. However, in my opinion, the County Board of Education is not legally liable for labor and material furnished the contractor, unless the County Board of Education agreed to pay for it or to see it paid as was true in the case of Greeson v County Board of Education of Elmore County, 129 So. 42.

I rendered an opinion on August 13, 1930, to the Superintendent of Education of Cherokee County, (Book 19, Opinions of Attorney General, 1930, p. 9, office edition) in which I held that a county board of education is not legally liable for labor and material furnished to independent contractor.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

December 15, 1930

The State Tax Commission,
CAPITOL.

Real Estate: Gas and Electric Stoves and Refrigerators are personal property.

Opinion by Assistant Attorney General Haynes.

Gentlemen:

I have your letter of August 27, 1930, in which you request my opinion as follows:

1. Is equipment such as electric and gas refrigerators and gas and electric stoves assessable as personal property or should it be included with the real estate and improvements?

2. If the above items are separately assessable and are under lease sale contract by whom should they be assessed, the lessor or lessee?

It is my opinion that such equipment should be listed as personal property. They are no part of the building itself. The fact that they are operated by pipes and wires built into the building could make no difference. If it did, by the same reason an electric iron would be a part of the building and would be classified as real estate, likewise, would be a vacuum cleaner. In order for an attachment of this character to be classed as real estate it must be a part of the building or at least must be permanently attached to the building so as to become a corporeal appurtenance. If the law was otherwise every tenant who attaches his gas stove to the pipe line of his landlord could not move the same when his lease expires, for once a part of the building it would have to remain such.

See Badger Lumber Co. v. Marion Water Supply and Electric Light Co., 15 L. R. A. 652.

Answering your second inquiry, it is my opinion if the household fixtures such as gas and electric stoves when purchased or under lease sale contract are for all intents and purposes the property of the lessee and the taxes should be assessed and paid by him.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

December 15, 1930

The Clerk of the Circuit Court,
Opelika, Lee County, Ala.

Solicitor's fee for failure to work public road after legal warning.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of November 29, 1930, in which you state that in your county there seems to be a difference of opinion as to what is the solicitor's fee where a person is charged with failure to work the roads after legal notice. One contention is that a person convicted for this of-

fense would be convicted for a violation of the revenue law of the State and that the Solicitor's fee would be $30.00

You request my opinion:

Does the failure to work a public road after legal warning constitute a violation of the revenue laws of the State and would the solicitor's fee be $30.00?

A conviction for failure to work the public highways after legal notice is not a violation of the revenue laws of the State and the Solicitor's fee would not be $30.00 but would be $10.00.

Section 194 of an Act of the Legislature approved August 23, 1927, (General Acts 1927, p. 348) provides who may be prosecuted for failure to work public roads after notice and is just a simple offense against the criminal laws and the fine in such cases is similar to fines in other violations of similar character and is not a part of the revenue law of the State. Therefore, the Solicitor's fee does not come under sub-paragraph of Section 3738, Code of Alabama, 1923, which is as follows:

"For each conviction of a violation of the revenue law not otherwise provided for ..... $30.00."

It comes under sub-paragraph of Section 3738, supra, which provides:

"For each conviction of a misdemeanor not otherwise provided for ..... $10.00."

Yours truly,
CHARLIE C. McCALL,
Attorney General.

December 17, 1930.

The State Tax Commission,
CAPITOL.

License Tax: Gasoline subject to tax upon withdrawal from storage: Law does not violate commerce clause of the Constitution.

Opinion by Assistant Attorney General Cobb.

Dear Sir:

I have your letters of November 3rd and November 5th. In your former letter you request my opinion:

"Referring to your opinion under date of September 30, 1930, in which you hold that railroads are liable for the tax on gasoline and

oil shipped from another State and withdrawn for their own use, we would appreciate an additional opinion answering the following questions:

"1. Could the State of Alabama collect this tax on gasoline and oil shipped from another State and **withdrawn** for use when the use was interstate commerce?

"2. Could the State collect this tax when the gasoline or oil was withdrawn for a use partly in intrastate and partly in interstate commerce? For instance, could the State collect this tax from the Mobile and Ohio Railroad when gasoline or oil is withdrawn from storage in Montgomery and used on a train running from Montgomery to Columbus, Mississippi, such train carrying both local and through passengers?

"3. Would the State have the right under the present law to require the railroads to adopt some method of keeping separately the intrastate and interstate consumption of gasoline and oil so that the tax could be collected on that part used in intrastate commerce?

"4. If such right under the present law does not belong to the State, would the State have the power to amend this law at the coming session of the Legislature so that the railroads could be forced to keep separately intrastate and interstate consumption?"

In your letter of November 5, 1930, you state:

"The letter of November 3rd has reference particularly to gasoline withdrawn from storage but the same questions can arise in connection with the **gasoline sales** made by **distributors generally.** For instance, we are just in receipt of a letter from the Standard Oil Company at Birmingham referring to the decision of the United States Airways, Inc. v. A. S. J. Shaw, Auditor of the State of Oklahoma asking whether the State of Alabama will expect the Standard Oil Company to pay the gasoline tax on gasoline regularly **sold** to **airships** engaged in interstate commerce. In other words, the Standard Oil Company wishes to omit from its monthly report of sales of gasoline all gasoline sold to interestate airways lines, and others for use in interstate commerce.

You request my opinion:

"Please cover this question in the opinion you may render in answer to our request of the 3rd.

The answer to your first question contained in your letter of November 3rd is in the affirmative. This question is covered in my opinion to the State Tax Commission dated September 30, 1930 and referred to hereinabove. Your attention is specially directed to that part of said opinion in which I held as follows:

"'Gasoline imported by the distributor from another state but used in the conduct of his business, loses its interstate character and may be subject to the excise, consistently with the commerce clause.'" Bowman, Attorney General, et al., v. Continental Oil Company, 256 U. S. 642.

"The point directly involved in the instant case is expressly decided in the case of Foster and Creighton Co., v. Graham, State Compt., et al., reported in 47 A. L. R. 971. This is a Tennessee case in which it was held that "a" statute placing a privilege tax upon one selling gasoline, and allowing the same to be withdrawn from storage, whether for sale or other use, reaches gasoline that is withdrawn and used without being sold."

See also Peterson Oil Co. v. Frary, State Inspector, 192 N. W. 366.

The answer to your second question is also in the affirmative. When gasoline or oil is withdrawn it loses its interstate character. The fact that after the gasoline and oil is withdrawn it is used partly in intrastate and partly in interstate commerce, does not prevent the State from collecting the tax.

The State can collect this tax from the M. & O. Railroad when gasoline and oil are imported and withdrawn from storage in Montgomery and used on trains running from Montgomery to Columbus, Mississippi.

Bowman, Attorney General v. Continental Oil Co. supra.

The answer to your third question is in the negative. Under the present law, the State would have no such right. Under the Alabama law (Section 2 of an Act approved January 25, 1927; Acts 1927, p. 17) the tax is imposed upon withdrawal.

Answering your fourth question, the State could not enact such a law. It would be unenforceable for the reason that the proportionate part of a license tax could not be identified.

Bowman v. Continental Oil Co., supra.
U. S. Airways Inc. v. Shaw, State Auditor, 43 F. (2nd) 148.

Answering the question contained in your supplemental letter of November 5, 1930, the Standard Oil Company at Birmingham is required to pay gasoline tax on gasoline regularly sold to airships for their own use while engaged in interstate commerce and it cannot legally omit from its monthly report gasoline sales, all gasoline sold to interstate airways lines, and others for use in interstate commerce.

When gasoline is imported and comes to rest within the State and is withdrawn from storage it has passed out of interstate commerce and is subject to the gasoline tax. The fact that it is afterwards sold to air-

ships for their own use while engaged in interstate commerce does not violate the commerce clause of the Constitution.

Peterson Oil Co. v. Frary, 192 N. W. 366.

Referring to the case of U. S. Airways v. Shaw, 43 F. (2d) 148, it appears from this decision that the District Court was passing upon Oklahoma laws, which do not exact a tax on gasoline upon withdrawal from storage.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

December 13, 1930

The Sheriff,
Brewton, Escambia County, Ala.

Election poll list and boxes can be released by the Sheriff only by order of Court having jurisdiction.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of November 29, 1930, in which you state "the election of County Commissioner from the Third District of Escambia County has been contested in the Circuit Court of your County. As Sheriff I have in my possession the poll lists and election boxes."

You request my opinion:

When am I authorized to turn over this list and the boxes to the contesting parties?

It is my opinion that after the contract is filed you would be authorized to turn over the poll list and the boxes only under an order of the Court trying the same. They are in your possession by virtue of your office and can only be released by you in obedience to an order of the Court.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

December 19, 1930

Clerk of the Circuit Court,
Dadeville, Tallapoosa County, Ala.

Fine and Forfeiture Fund. What claim of officers are paid from

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of November 26, 1930, in which you state that a defendant was convicted and sentenced to the penitentiary; took an appeal, and the judgment was reversed and cause remanded.

You request my opinion:

> Can the cost of **this appeal** be presently paid from the fine and forfeiture fund of the County or does it have to wait until the final disposition of the case?

It is my opinion that such items of cost if accrued in any criminal case on appeal to the Supreme Court or Court of Appeals where the case is reversed and remanded may be paid on proper certificate out of the fine and forfeiture fund of the county and that it does have to wait for the final disposition of the case. This is provided for under Section 4039, Code of Alabama, 1923 as amended by an Act approved Feb. 18, 1927, (General Acts of Alabama 1927 p. 45) which provides among other things: "* * * This section shall be held to apply to all fees of officers of the trial court arising on an appeal by the defendant to the Supreme Court or the Court of Appeals, in cases where the judgment of the trial court is reversed and a new trial allowed. * * *"

This clause in Section 4039, supra, was placed in said section by the amendment hereto referred to.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

December 19, 1930

The Sheriff,
Wetumpka, Elmore County, Alabama.

Sheriffs—Payment of fees for services in juvenile cases.

Opinion by Assistant Attorney General Koonce.

Dear Sir:

I have your letter of November 26, 1930. You request my opinion:

"1. Is a sheriff, who transfers juvenile delinquents who have been declared wards of the state, to such institution as directed acting under commitment from Judge of Probate, allowed a per diem for his service?

"2. If so, what should his per diem be?

"3. Does the sheriff receive his mileage in such instances?

"4. Does Section 3558 of Code of Alabama of 1923 govern, or have reference to charges in above instances?"

In my opinion a sheriff who transfers juvenile delinquents as outlined in your question numbered one is allowed a per diem of $3.00 and is also allowed actual necessary traveling expenses. In my opinion Section 3558 of the Code of Alabama, 1923, relates to charges in cases mentioned by you.

Section 3558 of the Code of 1923 provides that all officers serving processes from juvenile courts, or feeding prisoners, etc., shall receive the same costs, fees and compensation payable in the same manner and from the same source as are now allowed and paid for like services with respect to processes issued by the circuit courts.

Section 3741 of the Code of 1923, provides a fee of $3.00 for the removal of a prisoner and also provides for payment of actual necessary traveling expenses.

I rendered an opinion on October 14, 1929, to the Judge of Probate of Jackson County, Vol. 15, P. 53, Opinions of Attorney General (office edition) in which I held that Section 3558 of the Code of 1923, provides that the sheriff shall be paid for feeding juveniles as he is paid for like services in Circuit Court.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

December 22, 1930

Clerk, Board of Revenue,
Livingston, Sumter County, Ala.

Board of Revenue—May rescind former order disallowing claim and enter one allowing same.

Opinion by Assistant Attorney General Goodwyn.

Dear Sir:

I have your letter of August 18, 1930, in which you state that a claim was disallowed by the Board of Revenue at the November Term, 1929, which said claim was filed within twelve months after it accrued, and at a subsequent term some additional proof was offered and the claim reinstated and allowed.

You request my opinion:

Can the Board of Revenue reconsider and allow a claim at a subsequent meeting which it has previously disallowed?

I am of the opinion your question should be answered in the affirmative.

In order to determine whether or not the Board of Revenue can reconsider its action, it is necessary to ascertain whether the allowance or disallowance of a claim on the part of the Board of Revenue is a judicial, legislative or executive act.

The following is found in 7 Ruling Case Law, pp. 959 and 960:

33. Nature of Power of Boards—Reconsiderations.—The courts are not agreed as to the nature of the authority vested in and exercised by county boards or committees charged with the duty of auditing presented claims, some of the courts characterising it as executive, others as legislative, and others as judicial or quasi judicial. Many of the courts strongly contend that in settling and allowing claims, such bodies do not act judicially, but that they simply recognize the validity or invalidity of the claim as a charge against the county. In doing this there is nothing essentially comparable to a judicial proceeding. They render no judgment and issue no execution. Their duty is administrative only, and is merely to direct payment of the accounts by the proper officer, and to provide him with the necessary means for that purpose by taxation; and when they have made their allowance, the account has become liquidated, and may be sued without further demand. There is a conflict among the cases as to the right of a board to reconsider its action as to the allowance of a claim. Most of the courts denying the right, base their holding upon the view that such action is a judicial rather than an executive one, and that it therefore becomes conclusive not only upon others, but upon the board itself. In other jurisdictions, the action is held at best to be only quasi judicial, and therefore subject to correction by a subsequent action of the board. Where the right to reconsider is upheld it is said that a board of commissioners cannot, by any system of rules of its own making, preclude reconsideration and correction of its erroneous action, whether resulting from haste and want of con-

sideration or from intentional wrong; and, in furtherance of this right, that such a board possess the power to correct or supply its records by nunc pro tunc entries in order to make them speak the truth. Where, however, a certificate or warrant has been issued, or rights have become vested, the courts agree that the action of the board cannot be reconsidered."

The Supreme Court of Alabama in the case of Converse Bridge Co., et al. v. Geneva County, 168 Ala. (483), held that in auditing and allowing claims, courts of county commissioners act in the exercise of their executive or administrative power and do not act judicially, and hence, their action is not conclusive against the county.

If an allowance by the Board of Revenue is not conclusive against the county, by the same token a disallowance should not be conclusive against the claimant. I am mindful of the fact that the claimant has a remedy at law, but what is the need of a suit when the Board of Revenue admits that the claim against the county is a just one and should be paid.

I am, therefore, of the opinion that the Board of Revenue is within its authority in reconsidering and allowing a claim, at a subsequent meeting, which it has previously disallowed.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

December 23, 1930

Secretary of State,
State Capitol.

Secretary of State—Not authorized to issue permit to foreign corporation to do business in violation of the laws of Alabama.

Opinion by the Attorney General.

Dear Sir:

I have your request of recent date in which you submit for my inspection copy of Articles of incorporation of the Fleischman Transportation Company, a foreign corporation organized under the laws of the State of Ohio. The Articles of incorporation show that this concern is formed for the following purpose:

"FOURTH. Said corporation is formed for the purpose of acquiring, owning, leasing, operating and otherwise using tank cars and other cars for the transportation and storage of all kinds of grain, malt, spirits, whiskey, and all kinds of liquors, compressed yeast, vine-

gar, and all other products and articles incidental thereto and entering into the manufacture thereof, both within and without the State of Ohio."

You request my opinion:

Am I authorized to receive said Articles of incorporation and should I issue a permit to said foreign corporation to transact business in the State of Alabama?

In answer will state that you are not authorized to do so.

I invite your attention to the fact that under sub-division 8 of Section 6965, Code of Alabama, 1923, if this were a domestic corporation, the Probate Judge could not receive any declaration, certificate of incorporation, or other like instrument for the organization of such corporation which did not include in its declaration of incorporation a paragraph to the effect that such corporation should have no right to do the things that are mentioned in Section 4 of the Articles of incorporation of this concern.

This corporation could not do business in Alabama of the kind that it is formed to do without violating the laws of this State and simply because there might be some one thing in its Articles of Incorporation, that might be considered lawful, would be immaterial.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

December 29, 1930

The Tax Collector,
Jasper, Walker County, Ala.

Tax Collector: County authorized to pay for post cards informing taxpayer when tax is due and amount thereof.

Opinion by Assistant Attorney General Cobb.

Dear Sir:

I have your letter of September 24, 1930, in which you enclose post card which in substance advises the taxpayer when his tax is due and the amount of his tax, and further advises that the card is sent for the convenience of the taxpayer and for the purpose of enabling the tax collector to render prompt and efficient service.

You request my opinion:

Can the county pay for such post cards as the one attached, the substance of which is set out herein?

The answer to your inquiry is in the affirmative.

Section 9604 of the Code of Alabama, 1923, as amended by an Act approved September 6, 1927 (Acts 1927, p. 693) reads as follows:

"That Section 9604 of the Code of Alabama of 1923 be and the same is hereby amended to read as follows: (9604 Stationery of officers paid for by county.—The Judge of Probate, Tax Assessor, Tax Collector, Register of the Circuit Court in Equity, Clerk of the Circuit Court, Sheriff and the County Treasurer of Custodian must be allowed reasonable expenses, for suitable books, stationery, postage stamps used exclusively for official business, and telephones to be paid for by the county, on the approval of the Court of County Commissioners, Board of Revenue or other like governing body, and the Judge of Probate shall also be allowed expense for his seal of office, to be paid for by the county."

It will be clearly noted that provision is made in the above quoted section for the allowance of reasonable expense to the Tax Collector for suitable stationery and postage used exclusively for official business, to be paid for by the county on the approval of the Court of County Commissioners.

I am, therefore, of the opinion that under the provision of Section 9604 as amended, supra, the cost of the post card submitted is a proper and legal charge against the county.

See opinion to Tax Assessor, Saint Clair County, June 6, 1929, Opinions Attorney General, Book 18, p. 53, (office edition).

Opinions Attorney General 1926-1928, p. 563.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

December 29, 1930

The Tax Assessor,
Livingston, Sumter County, Ala.

Tax Assessor—Commission based on collection—Code Section 3040—How commission determined—Limitations as to time of action for commission.

Opinion by Assistant Attorney General Patrick.

Dear Sir:

I have your letter of June 21, 1930.

You request my opinion:

1. Whether under Section 3040, Code of Alabama, 1923, the commission of a county tax assessor in this state is based on the collections made during each tax year by the collector of the county, or based on collections made by the tax collector from assessments made during the preceding year.

2. What is the time limitation for action by the assessor for the recovery of commissions under Section 3040, Code of Alabama, 1923?

Section 3040, Code of Alabama, 1923, reads as follows:

"Section 3040.—COMMISSION OF TAX ASSESSOR. The tax assessor shall during the current term of the present incumbent of said office be paid commissions as now provided by law, after the expiration of the present term of the present incumbent of the office of tax assessor, the tax assessor shall be entitled to receive from the tax collector, out of the first money collected by him, giving him duplicate receipts therefor, one of which receipts shall be forwarded to the state auditor by the tax collector, the following commissions, to wit: In counties where the collections including taxes on real estate bid in at tax sales by the State do not exceed twelve thousand dollars, the rate of commission shall be eight per cent on the first thousand dollars, four per cent on the second thousand dollars, and two per cent on the remainder. In counties where collections, including taxes on property bid in at tax sales by the state, exceed twelve thousand dollars, the commission shall be as above declared up to twelve thousand dollars, and one and one-half per cent on the remainder up to sixty thousand dollars, and on all above sixty thousand dollars, one per cent. He shall also be entitled to receive two per cent on all collections made by the tax collector of special taxes, whether such special taxes be levied for the state or county, to be paid out of such special taxes. The tax assessor shall receive two per cent commissions on all special county or district taxes levied for school purposes; but he shall not receive such commissions on such special school taxes unless he had properly apportioned such special taxes. In counties of more than one hundred and fifty thousand population according to the last federal census, or any subsequent federal census, no fees or commissions shall be allowed for assessing the three mill county school tax and the three mill district school tax, but in lieu thereof the tax assessor in such counties shall be paid by the tax collector of such county the sum of one thousand dollars, which is provided by law to be retained by the tax collector for the tax assessor."

I wrote an opinion to the Chief Examiner of Accounts on April 30, 1928, in which, referring to assessing and collecting under this section, I used this language:

> "This assessing and collecting begins on October 1 of each fiscal year and continues to September 30th."

Biennial Report of Attorney General 1926-1928, p. 503.

A tax assessor has earned his commission under this section as soon as the assessments as to State taxes have been made, even before his reports have been filed.

Stewart v. State, 168 Ala. 270; 53 So. 182;

Biennial Report of Attorney General, 1910-1912, p. 123.

Thus, the commission of a tax assessor having been earned, he is entitled to draw some from the first money coming in upon the assessments, that is, during the year in which they are made.

In answer to your second inquiry, I shall refer you to Section 228, Code of Alabama, 1923, which reads as follows:

> "Section 228. CLAIMS BARRED IF NOT PRESENTED.—All claims against counties must be presented for allowance within twelve months after the time they accrue, or become payable, or the same are barred, unless it be a claim due to a minor, or to a lunatic, who may present such claim within twelve months after the removal of such disability."

Under Section 5680 a claim against the county must be presented to the court of county commissioners and disallowed before suit can be begun against the county.

Section 5680, Code of Alabama, 1923.

Therefore, it is my opinion that the tax assessor of any county in Alabama would come within this statute, and is limited to a year in which to bring action against the county for his commissions.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

December 30, 1930

The Tax Assessor,
Guntersville, Marshall County, Ala.

Costs and fees—Tax Collector—commission on taxes on redemption of real estate bid in by the State.

Opinion by Assistant Attorney General Goodwyn.

Dear Sir:

I have your letter of October 4, 1930. You request my opinion:

If you are entitled to commissions on the money paid for the redemption of lands that have been sold for taxes and bid in by the State

I am of the opinion that your question should be answered in the negative.

Prior to the decision of the Supreme Court of Alabama in the case of Board of School Commissioners of Mobile County v. American Surety Company of New York (220 Ala. 458), I held that tax collectors and tax assessors were not entitled to commissions on taxes on lands bid in by the State.

Opinions Attorney General, 1926-28, p. 400.

However, the above decision of the Supreme Court held Section 3048 of Code 1923 a valid enactment, in its entirety.

That part of said section 3048 of the Code which is pertinent to the question here involved is as follows:

"3048. Commissions of tax collector on general and special taxes. The tax collector shall be entitled to receive commissions on taxes collected by him, including taxes on real estate bid in by the State at tax sale, as follows: * * * *

From the above you will see that the tax collectors are entitled to commissions on taxes **collected by him,** including taxes on real estate bid in by the State at tax sale. This simply means he is entitled to commission on the taxes for the year for which the real estate was sold and does not include commission on the money paid for the redemption of such lands. After title passes into the State the tax collector has nothing further to do with the collection of taxes on such real estate until title goes out of the State, and is not entitled to commissions on the money paid to the probate judge for the redemption of lands that have been sold for taxes and bid in by the State.

In view of the above decision of the Supreme Court all opinions in conflict with this opinion are hereby overruled and withdrawn.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

December 30, 1930

The Judge of Probate,
Cullman, Cullman County, Ala.

Licenses—Transfer of Pool Room license.

Opinion by Assistant Attorney General Goodwyn.

Dear Sir:

I have your letter of December 13, 1930 in which you wish to be advised as to the proper way to transfer pool room licenses.

As provided by Section 363 of an Act approved September 15, 1919 (Acts 1919, p. 282) licenses are not as a general rule transferable. However, Section 3 of an Act approved September 5, 1923 (Acts 1923, p. 224) specifically provides the method for the transfer of pool room licenses. That part of said Act approved September 5, 1923 which is pertinent to the question propounded is as follows:

> "Provided further, that if any licensee hereunder shall voluntarily relinquish personal supervision, management and control of any billiard room, he shall surrender his license to the Probate Judge who may issue a new license to some other person, firm or corporation to continue said business, under the provisions of this Act, in which event credit shall be given for the unused portion of said surrendered license. But if any licensee shall relinquish management of said business as aforesaid, without surrendering his license for reissue as hereinbefore provided, said license shall be deemed to be forfeited and the probate judge may order the sheriff of the county or the Chief Law Enforcement Officer of the State of Alabama to close said place of business."

Yours truly,
CHARLIE C. McCALL,
Attorney General.

December 30, 1930

The Judge of Probate,
Tuscumbia, Colbert County, Ala.

Prisoners—Removal fee—To whom paid.

Opinion by Assistant Attorney General Goodwyn.

Dear Sir:

I have your letter in which you state that in May, 1929, the Colbert County jail was being repaired and the prisoners were ordered transferred to the Lauderdale County jail. That the sheriff employed a certain transfer company to haul the prisoners to and from the Lauderdale County jail. The transfer company has filed a claim against the county for these services.

You wish to be advised:

Should the county pay this claim?

I am of the opinion that although this may be a legal claim against the county as to the sheriff, there is no provision of law for payment to the transfer company.

Section 3741, Code of Alabama, 1923, as set out in the next to the last paragraph of said section, provides for payment of removal fee for prisoners.

> "* * * For removing any prisoner in cases where there is no jail in the county in which the offense is committed, or the jail therein is insecure, to the jail of another county, and for returning him to the jail of the county from which he was removed or to court for trial, three dollars for himself or his deputy acting in his stead, and two dollars for each guard for each day they are respectively engaged in such removal, together with the actual necessary traveling expenses of himself or deputy, and guard or guards, and prisoner or prisoners, while on the trip, by the nearest route usually traveled between the points from and to which such removal is made, to be taxed against, and paid by such prisoner, on conviction, or, if he is insolvent or is acquitted by the county in which the offense was committed; but in no case shall the county to which such prisoner was removed be liable for such costs or fees."

This paragraph provides that the sheriff is entitled to certain specified fees for the removal of prisoners. The transfer company is only the employee of the sheriff and must look to him for payment.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

December 30, 1930

Superintendent of Education,
Bay Minette, Baldwin County, Alabama.

Private Schools—Text Books—State does not prescribe text books for private schools.

Opinion by Assistant Attorney General Patrick.

Dear Sir:

I have your letter of October 1, 1930. You request my opinion:

Whether private schools in this State are required to employ the use of State adopted text books.

Section 427, Article XXLII, page 152 of the Alabama School Code of 1927 reads as follows:

"427. Course of Study Committee.—The State Board of Education, on the recommendation of the State Superintendent of Education, shall appoint a committee to be known as the Committee on Courses of Study to consist of not less than seven nor more than ten members actively engaged in teaching in the public elementary schools, high schools, normal schools or colleges of the State, two of whom shall be engaged in primary work, whose duty it shall be to prescribe the courses of study for the elementary and high schools of the State showing the minimum contents for the different kinds and grades of schools. The Committee on Courses of Study shall also prepare, or cause to be prepared, for approval and adoption the compulsory maximum contents of the courses for each grade of the elementary schools."

It is the intention of the statute, in my opinion, to merely prescribe a course of study for the public schools, that is, schools supported by public funds of the state. It does not purport to regulate any course of study for private or privately financed schools, or to infringe upon the natural exercise of the right of institutions.

It would seem that by "Schools etc., of the State" is meant schools maintained or supported by the funds of the State.

My opinion is that private schools in the State are not required to employ the use of State adopted text books.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

December 30, 1930

Clerk of the Circuit Court,
Florence, Lauderdale County, Ala.

Fine—Fine and cost may be paid after sentence is imposed and partly served for failure to pay same.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of June 28, 1929, in which you request the opinion of the Attorney General as follows:

> When one is fined ten dollars and cost and given an additional hard labor sentence of thirty days and upon failing to pay fine and costs, is sentenced to so many days for same, can he later pay said fine and costs?

I am of the opinion that the fine and costs may be paid after sentence is imposed for failure to pay same; credit being allowed on the costs according to the number of days served, but no credit is allowed on the fine. But a fine cannot be accepted in lieu of the additional hard labor sentence.

> "Where a convict fails to secure the fine and costs and is sentenced to so many days hard labor to pay the fine and to so many days to pay the costs, he may at any time afterwards pay the balance due on his costs after giving him credit for the number of days he has worked on the payment of the costs; that is provided for in Section 5291, Code of Alabama, 1923. He may pay the fine at any time before he has worked out the sentence for his fine; but in paying the fine, no credit will be allowed for the days that he has worked on the fine since there is no provision of law to that effect."
>
> Opinions of Attorney General, Biennial Report 1918-20, p. 391;
>
> Opinions of Attorney General, Biennial Report, 1926-28, p. 227.
>
> "The conclusion is that the sentence to imprisonment or hard labor when the fine is not paid, or judgment confessed therefor, is merely an alternative to enforce payment, and that upon the payment of the entire fine the convict is entitled to be released from the sentence therefor."
>
> Opinion of Attorney General, Biennial Report 1926-28, p. 217.

But the additional hard labor sentence is a different proposition. Such is not in lieu of the failure to pay fine and costs. It is an additional punishment and must be fulfilled. The Governor alone has the power to reprieve the convict of same.

Opinion of Attorney General, Biennial Report 1926-28, p. 217.

NOTE:

This opinion overrules opinion of August 10, 1929 to the Clerk of the Circuit Court of Lauderdale County. In this connection, see also Opinion of July 12, 1927, to Hon. Hamp Draper, Board of Administration.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

January 6, 1931.

The Sheriff,
Andalusia, Covington County, Alabama.

Sheriffs.—Jails—Duty of Court of Commissioners to make appropriation for laundry, etc. Duty of sheriff to apply same.

Opinion by Assistant Attorney General Patrick.

Dear Sir:

I have your letter of October 16, 1930.

You state that you have been paying for the laundry for the jail and have been doing so for the reason that the local Court of County Commissioners refuses to pay for same.

You request my opinion:

Whose duty is it to pay for the jail laundry?

Section 220, Code of Alabama, 1923, reads as follows:

"220. Duty of court at such special term.—Upon assembling, it is the duty of the court of county commissioners to make an appropriation of such an amount as is necessary for the purposes expressed in subdivision 1 of section 231 (153) of this Code, and for the payment thereof must order the issuance of a warrant payable to the sheriff, which must be paid by the county treasurer, on the presentment thereof, in preference and priority of all other claims."

Section 221, Code of Alabama, 1923 reads as follows:

"221. Duty of sheriff.—The appropriation having been made, and the sheriff having received payment thereof, it is his duty, so far as such appropriation will enable him, to keep the jail supplied with wholesome water for drinking and bathing, to keep drinking water

accessible at all times to each prisoner, to keep it comfortably warm in cold weather, at all times clean and free from offensive odors, and provide with necessary waterclosets, or dry earth, beds, bedding, and clothing for the use of prisoners."

Section 231, (Subsection 1), Code of Alabama, 1923, reads af follows:

"231. Preferred claims and the order of their priority.—The following claims are declared to be preferred claims against the county, and they shall be given priority in the order named: 1. Costs of heating the county jail in cold weather, of supplying it with wholesome water for drinking and bathing, of keeping it in a cleanly condition, and free from offensive odors, and of providing it with necessary waterclosets and dry earth, beds, bedding and clothing.

It is your duty as sheriff to make and submit to the Court of County Commissioners a careful estimate of the expenses necessary to keep the county jail properly heated, supply drinking and bathing water, beds, bedding, clothing, etc. This, in my opinion, would necessarily include the laundry concerning which you inquire. It is the duty of the Commissioners' Court to make an appropriation necessary for these purposes. It is the sheriff's duty to then carry out the mandates of the statute and provide for the water, comfort and cleanliness of the prisoners.

Opinions Attorney General Book 16 (office edition) p. 195
Opinions Attorney General, Book 18 (office edition) p. 22.

Your question, in my opinion, is answered by stating that you should present your strict estimate to the County Court of Commissioners, who should make an appropriation and you should apply such appropriation according to the terms of the statute.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

January 8, 1931

The Sheriff,
Tuscumbia, Colbert County, Alabama.

Board of County Commissioners. Reward for escape.

Opinion by Assistant Attorney General Patrick.

Dear Sir:

I have your letter of October 2, 1930.

You request my opinion:

Whether a County Court of Commissioners has, in this State, the authority to offer and pay a reward for the capture and conviction of a murderer.

A court of county commissioners, board of revenue, or like governing body in this State, is only clothed with such power as is specifically provided by statute, or such as arises therefrom by necessary implication. A county is an involuntary political or civil division of the State, created by statute to aid in the administration of government.

Southern Ry. Co. v. St. Clair County, 124 Ala. 491.
27 Sou. 23.
13 C. J. 388.

An examination of the statutes reveals no such authority reposed in a court of county commissioners, board of revenue, or like governing body and it is certainly no such power as is necessary or incident to the functions of such a body.

Provisions for the offering and payment of reward for any felon is reposed in the Governor of the State, and is provided for by Sections 4161 and 4162, Code of Alabama, 1927.

It is my opinion that a court of county commissioners has no authority to offer or to pay a reward for the capture and conviction of a murderer.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

January 12, 1931

Hon. D. F. Green,
Superintendent of Banks,
CAPITOL.

Banks may use its bills receivable or bonds owned by it in order to secure deposits of public officials, accepted as such security, in good faith, at or before the making of such deposit by such official as provided by Section 3973 of the Code, 1923.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of former date was duly received. You ask my opinion as follows:

Can a bank use part of its bills receivable or bonds in order to secure deposits for a public official?

In reply will say that "money placed on general deposit with a bank becomes the property of the bank and can be loaned or otherwise used by it as other moneys belonging to it. The bank becomes the debtor of the depositor and the obligation satisfied by honoring the depositors check to the amount of his deposit. The depositor's claim is a mere chose in action for such money. He becomes a creditor of the bank."—Alston v. State, 92 Ala. 126; Clisby et al v. Mastin, et al. The foregoing case was decided when the Code of 1896 was the law.

Sections 4668 of the Code, 1896, reads as follows:

"Embezzlement by public officers.—Any probate judge, clerk of a court of record, register in chancery, sheriff, coroner, tax collector, county treasurer, trustee of public schools, notary public, justice of the peace, constable, or other public officer, who knowingly converts to his own use, or permits another to use any of the revenue of the State, or any county thereof, or any money paid into his office, or received by him in his official capacity, is liable to indictment, and, on conviction, must be punished as if he had stolen it.

Under this section it constituted embezzlement for a Probate Judge, Clerk of a court of records, register of a Circuit Court, sheriff, coroner, Tax Collector, County Treasurer, Trustee of Public Schools, Notary Public, Justice of the Peace, Constable, or other public officer to deposit the money received in his official capacity in a general deposit in a bank.

On November 23, 1907, Act No. 74 (General Acts of Alabama, Special Section, 1907, page 162) said Section 4668 of the Code, 1896, was amended by adding thereto the following:

"provided, however, that none of the officers herein named shall be criminally liable under the provisions herein contained for depositing the revenue of the State or County, or any money paid into his office or received by him in his official capacity, in a bank, if the officer making the deposit in good faith requires, and takes from the bank, at or before making the deposit, good and sufficient security, to secure the payment of the funds deposited."

Section 4668 of the Code, 1896, with the amendment provided by said Act 74, approved November 23, 1907, now constitutes Section 3973 of the Code of Alabama, 1923.

It is still embezzlement for either of the officials named to place in the general deposit of a bank revenue of the State or County, or any money paid into his office or received by him in his official capacity unless such officer making the deposit in good faith requires, and takes from the bank, at or before making the deposit, good and sufficient security to secure the payment of the funds deposited.

In my opinion by reason of said Section 3973 any assets of the bank which constitute good and sufficient security for such deposit may be used by such bank for such purpose and accepted by such officer.

The officer taking such security is, under the statute, when acting in good faith, the judge of the amount and sufficiency of such security.

Bills receivable or bonds owned by the bank or any other assets of the bank constituting good and sufficient security may be used.

In my opinion, Section 6421 of the Code, 1923, modifies said Section 3973 to the extent only of determining that the bonds issued under the provisions of the Federal Farm Loan Act by the Federal land banks and also by joint stock land banks having their principal place of business in Alabama, created under the farm loan Act, when sufficient in amount and value, shall constitute good and sufficient security. The discretion as to rejecting such bonds as security for such deposits has been taken away from such officer by said statute. The officer making such deposit must still require of such bank, even if secured by such bonds, a sufficient amount thereof to constitute good and sufficient security for the repayment of such money. Section 3973 of the Code is not otherwise affected by said Section 6421. The bonds may not, in the market, be worth face value. In such a case, such bonds could not, in good faith be accepted, at face value, for such security.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

January 15, 1931

The Judge of Probate,
Clanton, Chilton County, Alabama.

Funds—Deposit of county funds on interest bearing account.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of January 15, 1931, in which you state that in 1917 Chilton County floated $200,000.00 of road and bridge bonds for the purpose of the construction of certain roads and bridges in the county, these bonds being payable in 1947.

Up to the present time $91,000.00 of said bonds has been paid and under the agreement of Chilton County with the holders of said bonds, taxes have been levied for the purpose of paying all of said bonds. The County now has probably a surplus of $50,000.00 in the County Treasury

which the county could use to pay off these bonds if same could be purchased. The money at the present time is in the bank without drawing interest. The Court of County Commissioners desires to place the probably $50,000.00 of the county's funds on savings deposit with some reputable bank of the county or divide the same in one or more banks, and, of course, the Court of County Commissioners will require depository bonds for the full amount of the deposit made in the banks.

You request my opinion:

1. Can the Court of County Commissioners legally order the Treasurer of the County to place said money on savings deposit at four per cent with reputable banks as stated?

2. If same is done, could the court make an order and retransfer the funds so deposited, or part of the same, back into the hands of the County Treasurer to be used for other purposes as the law provides?

I am of the opinion that the Court of County Commissioners may make an order authorizing the County Treasurer to place the surplus money on savings deposit as above stated.

Section 6755, (22) of the Code of Alabama, 1923, provides as follows:

"Section 6755. Authority of court.—* * * (22). To set aside such part of the revenue of the county as may be deemed expedient for the purpose of creating a sinking fund for the payment of bonds or other indebtedness and to invest such sinking fund in such interest-bearing securities, or deposit the same on interest-bearing account, within the state, as said court may deem wise."

Section 6756, Code of Alabama, 1923, provides as follows:

"6756. Deposit or investment of funds from special tax levy.—Courts of county commissioners and boards of revenue in the several counties of this state may deposit any funds arising from any special tax levied to pay bonds issued by said county, which are in excess of amounts then payable on said bonds, in some solvent savings bank in the State of Alabama, in the name of the county, or to invest the same in interest-bearing securities issued by the United States Government or by the State of Alabama. The interest accruing on such deposit or from such securities shall be a part of such special fund, and shall be devoted to the same uses as the principal of said fund. The courts of county commissioners, boards of revenue or other courts of like jurisdiction, shall require adequate bond of said bank to secure the safety of said deposit, which bonds shall be in such sum as such courts or boards shall fix, having due regard to the safety of county funds."

Under either of the above quoted sections, county funds may be put on savings deposit in accordance therewith.

Furthermore, I see no objection to retransferring the money, so put on deposit, back into the hands of the County Treasurer to be used for other purposes as the law provides.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

January 16, 1931

The Director,
State Highway Department,
CAPITOL.

Where advertisement for bids to build a certain road project according to "plan and specifications on file in the office of the State Highway Department at Montgomery, Alabama," are made by the State Highway Commission, the contract to be let to the lowest responsible bidder, and, at the bidding, it is understood by the Highway Commission and the bidder that the contract will be let subject to the approval of the Federal Bureau of Roads of such plans and specifications; if such plans and specifications are disapproved by such federal bureau, the bid made becomes void and does not apply to new plans and specifications subsequently made in accordance with such approval where nothing is provided in the advertisement, bid or plans and specifications for such a change.

Where the bidder in such a case deposited with the Highway Commission money as a guaranty of his bid, such money should be returned to him on the failure to make contract for the building of the project so bid upon.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of December 20th to hand. You make the following statement of facts:

As Highway Director, at the proper time prior to September 30, 1930, as provided by law you advertised for bids to build a certain federal aid road project No. 212, Calhoun-Cleburne Counties; according to plans and specifications on file in the office of the State Highway Department at Montgomery, Alabama.

The bids were to be in writing, filed with the Highway Commission, and accompanied by a deposit of five thousand dollars to guarantee the bid, if accepted. The contract was to be let to the lowest responsible bidder. The bids were to be opened on September 30, 1930.

The project was a Federal Aid Project, subject to the approval of the Federal Bureau of Public Roads.

The plans and specifications for the project had not been examined and approved by said Board on the date the bids were opened, and the bids for construction of the work in building the road was made subject to the approval of the Federal Bureau of Public Roads.

On examination of the project the said Bureau disapproved of part of the location of the road as shown by the plan and specifications and thereupon plan and specifications were drawn up in accordance with the desires of said Board. The new location of the road required greater costs in its construction than the original one bid upon.

There is nothing provided in the bid, advertisement or otherwise for the construction by the bidder of the project so approved by the Federal Bureau of Roads.

The bidder now asks that the Five Thousand Dollars put up by him as such guaranty, be returned to him.

You ask my opinion as to whether or not it is legal for such money to be returned him.

In reply will state that, from the facts as above stated, there has been no bid for the project as approved by the Federal Bureau of Roads. In my opinion the Highway Department is without authority to enter into a contract for the construction of the project, as approved, upon the bid made for the construction of the project originally submitted and bid upon.

Such being the case, in my opinion the bidder is entitled to a return of his money.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

January 19, 1931

The Chief Examiner,
Department of Examiners of Accounts,
CAPITOL.

Superintendent of Education. Long distance telephone calls. Courts of County Commissioners. County liable for long distance telephone calls of County Superintendent of Education.

Opinion by Assistant Attorney General Patrick.

Dear Sir:

I have your letter of January 6, 1931. You request my opinion:

> Whether the Court of County Commissioners is required to pay for long distance telephone messages for a County Superintendent of Education as such superintendent?

My answer is in the affirmative. Section 169, Alabama School Code, 1927, in part, provides:

The County Board of Revenue or Court of County Commissioners shall provide the County Superintendent of Education and his professional clerical assistants with ample convenient and comfortable office quarters. The County Board of Revenue or Court of County Commissioners shall provide necessary furniture, office equipment, stationery, postage, forms and supplies required by the County Superintendent of Education and his assistants.

Alabama School Code 1927, Section 169, p. 67.

On January 25, 1929, in an opinion to the Board of Revenue of Calhoun County, I gave it as my opinion that it is the

> "duty of the County Board of Revenue to furnish the County Superintendent of Education with a telephone and that it should pay for all long distance calls by the office of the County Superintendent of Education over said telephone where said calls are strictly on official business and where the claims are properly itemized and presented for payment."

Opinion Attorney General, (Office Edition) Book 9, 1. 115.

The telephone, both as to local and long distance calls, when properly used, must be recognized as greatly saving, time and expense. My opinion remains that given on January 25, 1929, and when properly itemized and presented to the Court of County Commissioners said court is required to pay for such long distance telephone calls by the Superintendent of Education as are made by him as such Superintendent.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

January 19, 1931

Mr. Ligon A. Wilson, Principal,
Snow Hill Normal and Industrial Institute, Inc.,
Snow Hill, Alabama.

Road Duty.—Teachers and pupils not exempt.

Opinion by Assistant Attorney General Patrick.

Dear Sir:

I have your letter of October 13, 1930.

You wish my opinion:

1. Whether young men are exempt from road duty by reason of the fact that they are in school each day.

2. Whether men teaching school are exempt from road duty by reason of the fact that they are at the time of notice engaged in teaching each day.

On October 7, 1927, I wrote an opinion to the County Health Officer of Baldwin County, Alabama, in which I stated that the persons exempt from road duty in Alabama are:

1. All women:
2. All men under the age of 18 and over the age of 45;
3. All persons who have lost an arm or leg;
4. All persons who, by nature or disease are rendered incapable of hard labor, who shall procure a certificate of such incapacity from the County Board of Health. I also added that in the event of no County Board of Health in any county a certificate of such "incapacity from two reputable physicians shall suffice."

Report of Attorney General, 1926-28, p. 320.
All National Guardsmen are exempt from road duty.
General Acts, 1927, p. 581.
Opinions Attorney General, (Office Edition,) Book 19, p. 339.

An employee of the State Highway Department is exempt when his services are needed specially by the State at the time of his summons for road duty.

Opinions Attorney General, (office edition), Book 15, p. 131.

The cases hereinabove named are the extent of exemptions that come to my attention. I quote them to illustrate the strictness with which the State enforces its road duty statutes.

It is my opinion that each of your questions must be answered in the negative as neither pupil nor teacher of a school in Alabama is exempt, for that reason, from road duty.

But those liable for road duty are permitted to provide for same by money compensation in lieu of such duty, as provided in Section 172 of an Act approved August 23, 1927, (Acts 1927, p. 348).

Yours truly,
CHARLIE C. McCALL,
Attorney General.

January 19, 1931

Judge of Probate,
Opelika, Lee County, Alabama.

Justices of the Peace—Election—the year in which justices of the peace are to be elected.

Opinion by Assistant Attorney General Patrick.

Dear Sir:

I have your letter of October 1, 1930. You request my opinion:

(1) When are justices of the peace elected in this State?

(2) When do the terms of office of justices of the peace expire?

Section 168 of the Constitution provides for the election of justices of the peace, stipulating that each precinct not lying within, or partly within, any city or incorporated town of not more than fifteen hundred inhabitants, shall elect not exceeding two.

Section 417, Code of Alabama, 1923, provides that justices of the peace shall, with certain other county officers, be elected on the first Tuesday after the first Monday in November every fourth year, dating from the year 1908. This, you will readily observe, gives us the years 1912, 1916, 1920, 1924 and 1928 in which justices of the peace were legally elected in this State and the next election, under this statute, will fall in the year 1932. This, in my opinion, answers your first question.

Section 2569, Code of Alabama, 1923, provides that justices of the peace shall, with certain other officers, take office on the first Monday after the second Tuesday of January next after their election, and hold office until the election and qualification of their successors.

Section 8700, Code of Alabama, 1923, provides that justices of the peace shall be elected as provided in the State Code Chapter on "elections" and is referring to the above mentioned Section 417.

In your letter you refer to what you term an apparent conflict in the statutes above referred to. It is my opinion that they are in harmony and that the terms of office of justices of the peace now properly holding office will legally expire on the **first** Monday after the **second** Tuesday in January following the **first Tuesday** after the **first** Monday in November, 1932, or upon the election and qualification thereafter of their successors. This, in my opinion, answers your second question.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

January 19, 1931.

Assistant Deputy Solicitor,
Bessemer, Jefferson County, Ala.

Hair Dresser—License—Hair dresser in beauty parlor with no interest in business.

Opinion by Assistant Attorney General Patrick.

Dear Sir:

I have your letter of November 18, 1930. You request my opinion:

Whether an employee of a beauty parlor who has no interest in the business but who dresses hair on a commission basis is subject to an annual $5.00 license under Schedule 132 of the compiled Revenue Laws of Alabama, Acts 1929, p. 292, (Sec. 361, Schedule 77, 1919.)

The schedule to which you refer reads as follows:

"Schedule 132. Osteopath, manicurist, chiropodist, hair dresser. —Each osteopath, manicurist, chiropodist, or hair dresser practicing his profession shall pay an annual license of five dollars to the State, but no license shall be paid to the county. If such business is conducted as a firm, or corporation in which more than one person is engaged, each osteopath, manicurist, chiropodist, or hair dresser so engaged shall pay a license of five dollars; provided further, that no osteopath shall be required to pay a license until after he has practiced his profession for two years."

You will notice that the term "hair dresser" is used in the statute and the only condition given is "practicing his profession." It is certain

that one dressing hair as an employee of a beauty shop, whether at a salary, on a commission or otherwise, is practicing his profession.

On January 16, 1930, I wrote an opinion to the probate judge of Lawrence County holding one engaged in the profession of giving permanent waves liable for a license under this schedule, as a hair dresser.

Opinions Attorney General, Book 16, p. 65 (Office Edition).

It is obviously the purpose of this statute to exempt from county license, but to assess and collect from each person who works at the hair dressing profession in the State an annual license of $5.00.

My opinion is that an employee of a beauty parlor who dresses hair, whether or not interested in the business, is subject to the annual license of $5.00 to the State, under Schedule 132, Compiled Revenue Laws of Alabama, Acts 1929, p. 292 (Section 361, Schedule 77, 1919).

Yours truly,
CHARLIE C. McCALL,
Attorney General.

January 26, 1931

Hon. J. B. Byrd,
Treasurer, Coffee County School Funds,
Enterprise, Alabama.

The County School Board of Coffee County was without authority to borrow money on March 1st, 1928, on the credit of the school fund of Coffee County, to meet salaries of teachers and current expenses, when the funds on hand were not sufficient to meet the same, and pledge as security for such debt, the money arising from the collection of the county three mill school tax, due October 1st, 1930.—Farned v. Bolding, 128 No. 435.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Receipt of your letter of January 10, 1931, is acknowledged. You have attached to the letter copy of a warrant for $3,000.00 made by the Board of Education of Coffee County to the First National Bank of Montgomery at its office in Montgomery, Ala. In this warrant it is stated that:

"This warrant is issued under authority given County Boards of Education by School Code of Alabama and is given for the purpose of paying current expenses and teachers salaries."

It is further stated in said warrant:

"And to secure this note when due there is hereby pledged to the payment thereof so much of the three mill county school tax of Coffee County levied under the provisions of the Alabama School Code and the Constitution and other laws of the State of Alabama, pertaining thereto which tax was voted at the special election held therefor in said County on August 3, 1925, as may be necessary to pay the principal and interest thereof of the debt hereby secured which taxes will be collectible beginning October 1, 1930."

You wish the opinion of the Attorney General as to whether or not the warrant in question and the accompanying interest coupons are legally valid and if the same constitutes a preferred claim against said three mill county school tax for the period therein referred to. In the case of Heustess v. Hearin, 213 Ala. 106, the Supreme Court of Alabama in construing Section 104 of the School Code, 1924 (which Section was substantially the same as Section 130 of the School Code of 1927) held that the County School Board may under the conditions therein named borrow money on the credit of the School Funds of the County to meet salaries of teachers and current expenses, the payment of such money to be secured by a pledge of the current revenues of the year. In that case the School Board of Montgomery County during the school year 1923-1924, undertook to borrow money to meet the salaries of teachers when the current funds on hand were not sufficient to meet the same and to secure the payment of such money by a pledge of the county three mill tax collectible October 1, 1924, all other requirements of the law being complied with. The bill in that case was filed to prevent such action on the part of the County School Board by a taxpayer of the County. The Court decided that under the authority of Section 104 of the School Code, 1924, such action on the part of the County School Board was permissible and that such warrant would be valid and that the county three mill tax collectible on the first day of the following October could be pledged to secure the loan.

After the above decision in the case of Heustess v. Hearin was put out, the County Board of Education of Franklin County, having accumulated an indebtedness which had accrued for seven or eight years resulting from deficits in the school funds available to pay teachers and other current expenses, undertook to obtain a loan under the provisions of said Section 130 of the 1927 School Code according to its understanding of the decision in said case of Heustess v. Hearin, and to pledge as security therefor the money to be derived from the county three mill tax for the succeeding period of seven years. One, Farned, a taxpayer of Franklin County, in that case filed a bill against Bolding, Superintendent of Education, et al, to enjoin such proceeding. The opinion in that case was, in our opinion, so well and ably written that no room for mistake was left for any subsequent case. In that case, speaking of the County Board of Education of Franklin County, the Supreme Court says:

"The board, by resolution, reciting the situation, ordered that interest-bearing warrants to the face value of $21,000.00 be issued and sold, and proceeds placed in the current school fund. The interest on the warrants is to be paid semiannually, and $3,000.00 of the principal to be paid each year, retiring the whole at the end of seven years, all secured by a pledge of the county three-mill tax voted for 'public school purposes'. Essentially the plan is one to fund and amortize the outstanding indebtedness.

"To thus borrow money for the immediate purpose of paying current demands for teachers' salaries, etc., is sought to be accomplished under authority of Section 130 of the School Code of 1927, as construed in Heustess v. Hearin, 213 Ala. 106, 104 So. 273.

"In that case we upheld the authority of the county board of education to pledge the revenues of the current year, and the three-mill tax of the succeeding year to secure a loan of this character. This because of an express exception in the statute, withdrawing such loan from the requirement that it be repaid from the funds accruing for the current year. Now we are asked to extend such rule so as to pledge the revenues for the full life of the three mill levy, drawing on the income of the remote future to maintain our present schools.

"The exception permitting the pledge of the three-mill tax fund of the future, standing alone, is quite indefinite. So we must look to this and related statutes disclosing the general scheme for the maintenance of our public school system.

"(1) The general tenor of Code, Section 130, is an authorization to borrow money for current expenses on a pledge of current revenues.

"As to the three-mill tax, a county levy by vote of the people, current revenues are not limited wholly to the revenue of that particular year.

"The section must be read, however, as a whole; and the thought of repayment of such loans from current revenues must not be ig nored.

"One related statute appears in School Code, Section 136. This section aims to take care of and retire accumulated indebtedness created by the county board of education. Interest-bearing warrants, running through a period of not exceeding fifteen years, retiring not less than one-fifteenth of the debt each year, is the method devised by this section.

"But this statute is limited to indebtedness incurred prior to October 1, 1927. A like statute provided for indebtedness accruing prior to October 1, 1923, School Code, 1924, Section 110; Acts 1923, p. 553.

"The statutes import no intent to grant boards of education a basis of credit upon which to encourage the creation of ever-increasing indebtedness, with a burden of interest charges on school revenues running through the years.

"Another statute empowers county boards of education to borrow money on interest-bearing warrants to erect and equip school buildings not to exceed the prospective funds to be derived from the special county tax levied pursuant to law. School Code, Section 281. School buildings have an element of permanence, inuring to the benefit of the children of the future as well as the present.

"The limited terms of these statutes, the failure to include the indebtedness here involved within the class for which long-term interest-bearing warrants may be sold, strongly argues against the plan proposed in this case.

"We are not unmindful of the strong appeal to boards of education to provide adequate public schools, and the express policy of the law to give extended school terms.

"(2) Still, a stronger and more imperative policy of justice demands that he who pays the tax shall have the benefit of same.

"To pay a tax which has been anticipated and used in the education of children seven years in the past and increased by a carrying charge by way of interest is not in keeping with such policy.

"(3) The law contemplates a budget confining expenditures to the funds reasonably in prospect.

"Maybe some indebtedness will develop despite all reasonable efforts to prevent; but no policy of making debt to be taken care of by others who may have received no benefits therefrom is to be found in our statutes. Each recurring period has burdens all its own, and every care should be observed not to pass the burdens of one period on to another.

"We are impelled to limit the rule in Heustess v. Hearin, supra, to what was there decided, to the case there presented, and not extend the same to cover a case like this."

Farned v. Bolding, et al, 128 So. 433.

I have quoted at length because it makes clear the whole situation. The said case of Farned v. Bolding, Superintendent of Education, et al, limits the period for which the three mill county school tax may be pledged for payment of money borrowed under the provisions of Section 150 of the 1927 School Code, to meet salaries of teachers and current expenses when the current funds on hand are not sufficient to meet same and to

secure the payment of such money by the current revenues of the year to the current revenue of the school year to be obtained from the several sources provided by law together with the money to be derived from the collection of the county three mill school tax becoming due on the next succeeding first day of October.

From the foregoing, it is clear that the County School Board of Coffee County was without authority to borrow the money in question and pledge for the payment thereof the proceeds of the county three mill tax of Coffee County becoming due October 1, 1930. The money was borrowed in March, 1928. All that could legally have been pledged for the repayment of such money by the County Board of Education was the current revenues of the year, which included the proceeds to be obtained from the county three mill school tax falling due October 1, 1929.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 29, 1931

Hon. R. B. Newton,
Tax Collector, Fayette County,
Fayette, Alabama.

World War Veterans who have been adjudged insane—exemptions from taxation.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of December 17, 1930, addressed to Hon. Charlie C. McCall, Attorney General. You state that you have in your County a World War Veteran who is of unsound mind. You also state that he has a guardian and that he owns certain property in your County.

You request my opinion:

Has such veteran any other and additional exemptions other than the $1,000.00 allowed insane persons under the statute?

I am unable to find any law that gives him exemption of ad valorem tax for the reason that he is a World War Veteran. However, under Section 2 of an Act approved August 22, 1923, page 142, I find the following subdivision which is designated in said Act as subdivision D which is as follows:

"* * * All deaf mutes and insane and blind persons, and their property to the extent of $1,000.00."

This is the only provision that I have been able to find and of course it is a general provision applying to all insane persons who own property.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 2, 1931

Hon. S. H. Blan,
State Treasurer,
CAPITOL.

Construction of registration act passed recently and approved by the Governor providing for registration of outstanding State warrants, claims and accounts against the State.

Opinion by the Attorney General.

Dear Sir:

This is to acknowledge receipt of your letter of January 30th, in which you ask that I interpret for your guidance a bill passed by the Legislature and approved by the Governor providing for registration of outstanding State warrants, claims and accounts against the State.

You ask numerous questions. I have endeavored to consider all of your inquiries in light of the Act and arrive at the Legislature's intention. I hope the following will be of benefit to you:

As shown by its caption, the purpose of the Act is, "To determine the amount of outstanding current debts of the State." The Act specifically provides that the following things be done:

1. That all warrants heretofore issued by the State Auditor, which are now outstanding and unpaid, shall be presented to the State Treasurer by the holder thereof in person or by agent, and that the Treasurer shall register the same in a book kept for that purpose. The provision "all warrants heretofore issued by the State Auditor," applies to all warrants of every kind issued prior to three o'clock P. M., January 30, 1931. It does not apply to any warrant issued subsequent to that time.

2. The Act further provides that, "all outstanding claims against the State and all accounts now claimed to be due, under contract or otherwise, for which warrants have not been issued, shall be itemized and sworn to be the proper person and presented or forwarded to the Treasurer for registration." This applies to all claims and accounts against the State for any business transaction that any person may

have had with the State or for any amount claimed by anyone for any material or property he may have sold to the State or any agency thereof. It would not apply to salaries of employees of the State or any of its institutions or agencies.

3. The law requiring registration of the warrants will not affect any provisions heretofore made protecting Trust Funds nor will it change the preference on any warrants nor will it give to any warrant a preferred status, when it would not have a preferred status, except that within its class a warrant is paid in the order of its registration.

The law does not affect the payment in the future of salary warrants for payroll nor the payment of the Legislature, nor the payment of incidental expenses. The warrants which are registered will be entitled to payment if and when there are funds to pay them, but the registration does not give them preferences over the obligations of the State created subsequent to the issuance of these warrants unless there were such a preference prior to the registration law.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 2, 1931

Hon. A. N. Barrentine, Sheriff,
Jasper, Walker County, Alabama.

Janitor employed by Commissioners Court.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of January 23, 1931, in which you request my opinion as follows:

(1) Please give me an opinion on the meaning and interpretation of Sections 211 and 6755, Code of Alabama, 1923.

(2) Who has authority to appoint a janitor for the courthouse?

Answering your first inquiry, permit me to say that Section 211 has nothing whatever to do with the appointment of a janitor for the courthouse, but simply defines the duties of the sheriff in keeping and maintaining the courthouse and the grounds attached thereto.

Section 6755 does deal with the appointment of a janitor for the courthouse. Subdivision 2 thereof is as follows:

"It shall be the duty of the court to provide a janitor for the courthouse and to see that the janitor keeps clean and in a sanitary condition all the courtrooms, corridors, halls and offices in the courthouses of their respective counties."

Therefore, answering your second inquiry it is my opinion that the employment, and the appointing of a janitor for the courthouse, under subsection supra, is placed in the hands of the commissioners court, board of revenue or other governing body of county.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 2, 1931

Hon. B. M. Miller,
Governor,
CAPITOL.

State warrants may be certificated to be payable at future date, which warrants may be paid out of the gasoline tax provided by Act of 1927, for the purpose of paying bonds and the interest thereon of the State, which bonds and interest thereon are to be paid out of the proceeds of the gasoline tax.

Opinion by the Attorney General.

Dear Sir:

This is to acknowledge receipt of your request for an opinion of even date herewith.

You inquire whether or not the State may legally issue warrants in payment of the principal and interest on Series H-2, Bonds issued under the Act of 1927, certificated to be payable at a future date, the warrants to be paid out of the gasoline tax provided by the Act of 1927 for the payment of the bonds and the interest thereon; the indebtedness thus deferred to bear interest at a rate not exceeding the rate provided for said bonds.

I am of the opinion that the State may legally issue warrants in payment of this indebtedness, which warrants are to be paid at a future date and shall be paid out of the fund derived from the gasoline tax, as provided by the Acts of 1927. I note that the interest on this indebtedness will be no greater than the interest the indebtedness is now bearing, and also that the same fund which is chargeable with the payment of this indebtedness, will be charged with the payment of the warrants and the interest.

I see no legal objection to the proposed method of preventing the State becoming embrassed by becoming in default in the payment of the principal and interest on the bonds.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 4, 1931.

Hon. Sam T. Huey,
Deputy Probate Judge, Bessemer Division,
Bessemer, Alabama.

License—Photographers.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of January 31st, 1931, in which you request me to advise you whether or not under Schedule 79 of the Revenue Act of 1919, a person developing kodak films or films of any kind would be liable for a photographer's license. You state that in the particular case the party will not take any pictures but will develop films at her shop which have been taken by other people.

Schedule 79, Acts 1919, page 282, provides as follows:

"For each photograph gallery or person, firm, or corporation engaged in photography etc."

It is my opinion that the regular development of films in the manner described by you constitutes such person as one engaged in photography and therefore subject to the license in said Schedule 79.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 5, 1931

Hon. D. B. Borden,
Judge of Probate,
Greensboro, Hale County, Ala.

Mortgage Tax—Mortgage given to indemnify surety on depository bond.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

Your letter of January 6th, addressed to Hon. Chas. E. McCall, Chief Examiner of Accounts, has been referred to this office for reply and opinion.

You state that the First National Bank of Greensboro has been designated as County Depository and as such, has filed bond with personal securities in the amount of $45,000.00. You state further that an instrument has been filed for record in your office in which it is recited that J. A. Blunt, the grantor (who is President of the bank but who executes the instrument as an individual) has asked one H. A. Taylor to become surety on the bond above described and has agreed to indemnify him from all harm and damage by reason of his becoming surety on such bond. That said instrument recites that in consideration of the premises and the sum of $5.00 the said Blunt sells, alias and conveys to said Taylor certain properties therein described. Said instrument further provides that in the event of damage to said Taylor by reason of such suretyship, he shall have the right to sell the property conveyed to him under the instrument and that said instrument contains this provision, "but this is a mortgage and is made on the condition and is executed to guarantee said H. A. Taylor for any liability assumed by him by reason of his signing said bond."

You request me to advise you, whether or not:

1. Said instrument is subject to a tax as a mortgage?

2. Whether the amount of the bond, to-wit, $45,000.00, is the measure of the tax which is to be paid on the instrument?

Replying, I advise

1. In my opinion such instrument is subject to the recording privilege tax required of mortgage filed for record.

2. That the amount of the liability under such mortgage is $45,000.00 and the tax should be paid on that sum.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 5, 1931

Hon. John Brandon,
State Auditor,
CAPITOL.

Compensation—employees of Senate and House.

Opinion by the Attorney General.

Dear Sir:

This is to acknowledge the receipt of your request for an opinion of January 29, 1931, in which you inquire whether or not you are authorized to pay the subordinate officers of the Senate and House of Representatives on the presentation of vouchers under that certain Joint Resolution passed by both Houses increasing the salaries of the subordinate officers of the House.

I am of the opinion that the Joint Resolution in question does not authorize you to pay the salaries of these employees of the Senate and House beyond that amount fixed by Sections 1528, 1529 and 1534 of the Code of 1923.

I am aware of the fact that in 1927 Section 1530 of the Code of 1923 was amended (General Acts 1927, p. 15), which amendment provided that by rules of the House and Senate the number of subordinate employees might be increased. This Act amending Section 1530 did not attempt to fix the salaries of such employees, consequently to determine what their salaries shall be, we are forced to consider the Acts of the Legislature providing the amount of their compensation, which Acts are in the instant case, the Sections of the Code above referred to.

The conclusion springs naturally from the consideration of the Constitution of 1901.

Section 61 of the Constitution provides inter alia that no law shall be passed except by bill.

Section 62 provides that no bill shall become a law until it shall have been referred to a standing committee of each House, acted upon by such Committee in session and returned therefrom, which facts shall affirmatively appear from the Journal of each House.

Section 67 of the Constitution provides that the Legislature shall prescribe by law, the number, duties and compensation of the officers and employees of each House and that no payment shall be made from the State Treasury to any person not elected or appointed in pursuance of law.

Section 72 provides that no money shall be paid out of the treasury except upon appropriations made by law.

A resolution of the Senate and the House is not a law in the matter of making an appropriation.

Reynolds v. Blue, 47 Ala. 711.

However, I find sufficient authority in the Act amending Section 1530 of the Code of 1923, (General Acts 1927, p. 15), to justify and authorize the House and Senate, by its rule, to increase the number of subordinate employees.

I must reiterate however, that their compensation must be in accordance with an existing law.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 6, 1931

Hon. G. P. Butler,
Judge of Probate,
Opelika, Lee County, Alabama.

License—drug stores selling sandwiches, lunches.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of January 31, 1931, in which you state that a drug store operating a soda fountain conducts a sandwich toaster in conjunction with the fountain.

You request my opinion:

> Whether or not such a store is liable for a license as a restaurant, cafe, lunch counter or public eating house where meals, food or refreshments are served and charged for under Schedule 154 of Section 334, Revenue Laws of Alabama, 1929, (General Acts 1919, p. 282, Section 361, Schedule 92), although such store pays the regular soda fountain license under Schedule 155, Section 334 Revenue Laws of Alabama, 1929, (General Acts 1919, p. 282, Section 361, Schedule 96).

I am of the opinion, under the above statement of facts, that the store is liable for a license as a restaurant under Schedule 154, of Section 33, Revenue Laws of Alabama, 1929, (Acts 1919, p. 282, Section 361, Schedule 92).

Biennial Report of Attorney General, 1924-26, p. 70.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 6, 1931

Hon. J. Z. Mims,
Clerk, Circuit Court, Chilton County,
Clanton, Alabama.

Cases arising from juvenile act—no costs can be taxed.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of December 22, 1930, in which you state that a party was convicted in the Circuit Court of your County for non-support of his child and was ordered to pay $10.00 per month for its support. The case was appealed to the Court of Appeals and affirmed.

You request my opinion:

How am I, as clerk, to collect the cost of the proceedings?

I know of no way that this cost be collected. There is no provision of law for taxing cost in cases of this character. But, on the other hand, there is a provision of law under Section 4492, Code of Alabama, 1923, the latter part of this Section dealing with cases arising under the juvenile act which says:

> "There shall be no costs of any kind whatever taxed in cases arising under this chapter."

Therefore, if there is no authority of law for taxing costs, there can be no way to collect it. It first must be taxed and if not promptly paid, execution may issue against the party against whom the cost has been adjudged. But certainly in this case, this cannot be done as the law prohibits the taxing of such cost.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 9, 1931

Hon. H. K. Martin,
Judge of Probate,
Dothan, Houston County, Ala.

Coroner—compensation of.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of January 24, 1931, enclosing letter from Messrs. Lee and Tompkins, County Attorneys of Houston County, in which you state that the Board of Revenue of your County is confused as to how certain fees of the coroner are paid. The main confusion seems to arise over an Act approved September 9, 1927, (General Acts 1927, p. 497). This Act is amending Section 4559, Code of Alabama, 1923, and one of the things which is added to this Section by the amendment, is as follows:

> "* * * * * when a coroner has been informed that a person is dead in the County and that such person died without being attended or examined by a legally qualified physician, the coroner shall forthwith proceed to the place where the dead person is lying and examine the dead body to ascertain the cause of death and report the same in the same manner as inquests are reported."

I find under Section 4556 of the Code of Alabama, 1923, that this provision is made:

> When a coroner has been informed that a person has been killed, or suddenly died under such circumstances as to afford a reasonable ground for belief that such death has been occasioned by the act of another by unlawful means he must forthwith make inquiry of the facts and circumstances of such death, etc."

It is true at first glance that the two statutes, do not appear to be in consonance; under Section 4557, supra, the death must have been under such circumstances as to afford reasonable grounds for belief that the death was occasioned by unlawful means.

Under the Act supra, which amends Section 4557 of the Code of 1923, the coroner can make this investigation whenever he is informed that a person is dead in the county and that such person died without being attended or examined by a legally qualified physician, etc.

It is my opinion that these two sections do not in any wise conflict. Section 4557, supra, states:

> "* * * * * When a coroner has been informed that a person has been killed or suddenly died under such circumstances as to afford

reasonable ground for belief that such death has been occasioned by the unlawful act of another."

The Act amending Section 4559 simply adds:

"When a coroner has been informed that a person is dead in the county and that such person died without being attended or examined by a legally qualified physician, the coroner should forthwith proceed" etc.

This is just simply adding an additional duty and obligation upon the coroner and in nowise does it conflict with the provisions of Section 4557, supra. Therefore, it is my opinion that the provisions of both statutes can be given and do have a field of operation and when these duties are performed by the coroner, then it would be the duty of the Board of Revenue or Commissioners Court to allow his claims for such services rendered.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 10, 1931

Hon. W. H. Cantrell,
Judge of Probate,
Hamilton, Alabama.

Slot machine moved to different place in same County and operated by same party requires a new license.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I acknowledge receipt of your letter of January 6th, addressed to Hon. Chas. C. McCall then Attorney General, in which you state, "If a man buys a State and County license to operate a slot machine and designates a certain town as his post office and later moves his machine to another town in same County does said move necessitate his buying a new license?"

It is my opinion that under the provisions of section 363 Acts 1919 page 282 a new license must be secured.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 10, 1931

State Tax Commission,
CAPITOL.

Attention: Mr. S. C. Crockett.

"Persons"—Construction of in various license schedules.

Opinion by Assistant Attorney General Moore.

Dear Sir:

In reply to your request for opinion under date of February 5, 1931, requesting me to advise you as to the meaning of the word "person" used in the various license schedules, I beg to advise you my opinion on the meaning of this term is herewith given in each case named by you.

You refer to Schedule 57, Section 361, of an Act approved September 15, 1919, known as the Revenue Act of 1919, and particularly to an opinion of this office delivered June 12, 1929, in which in construing said Schedule 57 it is said:

> "Each member composing this firm is required to pay a license of $20.00 for each county in which he does business."

You request particularly my opinion of the effect of this ruling on certain Schedules hereinafter discussed.

I am of the opinion that the opinion of this office under date of June 12, 1929, is in error and that the license provided for by Schedule 57 is not an individual license but is a business license and that, therefore, the word "person" as therein used includes firms and corporations, and I so hold. The opinion of this office under date of June 12th, 1929, being Biennial Report of Attorney General, 1928-1930, page 464, is therefore overruled.

In the Acts of 1919, page 282, Section 379, it is expressly said:

> Meaning of the word 'person'—"Where the word 'person' is used in this act it shall be held to include firms, companies, associations, and corporations."

Again in the Acts of 1923, page 152, it is provided as follows:

> Definition of 'term'—"That whenever the terms mentioned in this section are employed in this act, they are employed in the following sense: (g) The term 'person' or 'party' or other word or words importing the singular number shall be held to include firms, companies, associations, and corporations, and all words in the plural number shall apply to single individuals in all cases in which the spirit and

intent of this act require it; and all words importing the masculine gender shall also apply to females; and all words importing the present tense shall also apply to the future."

It is also provided in Acts of 1923, page 284, Section 7:

" 'person'. Every natural person, firm or co-partnership association or corporation."

Acts of 1927, page 139, Section 26, and page 16, Section 1, provides:

The words 'person' means and includes "persons, corporations, co-partnerships, companies, agencies and associations, singular or plural."

From the foregoing it clearly appears that the word 'person' when used alone may include persons, firms, associations or companies and that the entire Section or Schedule must be examined to determine whether the particular license is an individual license applying to each individual person doing the act for which a license is required or whether it is a business license upon which a license shall be paid by the firm, whether the same be composed of one member or more than one.

Moreover an examination of certain Sections, particularly Actuaries, Acts 1927, page 139, Section 4; Architects, Acts 1927, Section 6; Attorneys, Acts 1927, page 139, Section 7; Dentists, Acts 1927, page 139, Section 8; Doctors, Acts 1927, page 139, Section 9; and certain other Schedules reveal the fact that they specifically provide that where the business is conducted as a firm or corporation in which more than one person is engaged, each person so engaged shall pay the license required by the particular Schedule. These Schedules must be taken into consideration in determining the intent of the Legislature on those Schedules where no such provision is made.

It therefore appears that in determining the construction to be given to the term 'person' in any particular section or schedule, the nature of the act to be performed, the kind of business to be conducted, the language of the particular schedule and the intent of the Legislature as afforded by a comparison with other sections or schedules of the various revenue acts must be considered before giving a definition to the word "person" in any particular act.

It is my opinion that Schedule 57, Section 361, of an Act approved September 15, 1919, is a business license and not a personal license.

With these principles in mind, it is my opinion that the word "persons" in the Schedules set out by you are to be construed as follows:

Acts 1919, page 282, Section 361, Schedule 4, "adding machines," etc., the word "person" as there used includes persons, firms, and corporations.

Section 4, Acts 1915, page 489, "adding machines, etc.," in counties having a population of sixty thousand or less, in this Schedule the word "person" includes persons, firms, and corporations.

You refer to Schedule 118, Acts 1919, Section 361, page 282, "automobile filling stations." This law was rewritten as Section 20 of the Revenue Acts, 1927, and is to be found in Acts 1927, page 139. This Act includes persons, firms and corporations.

The same construction is given to Schedule 14, Acts 1919, page 282, Section 361, "barber shops."

The same construction applies to Schedule 18, Acts 1919, page 282, Section 361, "bill posters."

The same construction is given to Schedule 19, Acts 1919, page 282, Section 361, "bond makers."

The same construction applies to Section 69, Acts 1915, page 489, "brokers, merchandise."

The same construction is given to Schedule 26, Acts 1919, page 282, Section 361, "circuses."

The same construction is given to Schedule 29, Acts 1919, page 282, Section 361, "coal or coke agents or dealers."

The same construction is given to Schedule 30, Acts, 1919, page 282, Section 361, "cold storage."

The same construction is given to Section 21, Acts 1915, page 489, "commission merchant."

The same construction is given to Schedule 36, Acts, 1919, page 282, Section 361, "cotton compresses."

The same construction is given to Schedule 37, Acts 1919, page 282, Section 361, "cotton oil mills, etc."

The same construction applies to Section 14, Acts 1927, page 139, "directories."

The same construction applies to Schedule 50, Acts 1919, page 282, Section 361, "fertilizer factories."

The same construction applies to Schedule 107, Acts 1919, page 282, "moving picture shows."

The same construction is given to Schedule 75, Acts 1919, page 282, Section 361, "newstands."

The same construction is given Schedule 78, Acts 1919, page 282, Section 361, "pawn brokers."

The same construction is given to Schedule 85, Acts 1919, Section 361, "piano and organ dealers."

The same construction is given to Section A, Acts 1919, page 1085, "pistols, etc."

The same construction applies to Schedule 96, Acts 1919, page 282, Section 361, "retail soft drinks."

The same construction applies to Schedule 94, Acts 1919, page 282, Section 361, "shooting galleries."

The same construction applies to Schedule 98, Acts 1919, page 282, Section 361, "stocks and bonds."

The same construction applies to Schedule 106, Acts 1919, page 282, Section 361, "theatres."

The same construction applies to Schedule 96½, Acts 1919, page 282, Section 361, "wholesale soft drinks."

The same construction applies to Schedule 49, Acts 1919, page 282, Section 361, "eye glasses."

The same construction applies to Schedule 65, Acts 1919, page 282, Section 361, "lightning rods."

The same construction applies to Schedule 69, Acts 1919, page 282, Section 361, "monument dealers."

The same construction applies to Schedule 121, Acts 1919, page 282, Section 361, "ship brokers."

Schedule 87, Acts 1919, page 282, Section 361, provides as follows:

> "For each person doing business as a master plumber, or steam fitter, or tin shops, in towns or cities of ten thousand or more inhabitants, twenty-five dollars, in all other places, ten dollars."

This Schedule was construed in an opinion by this office under date of August 31, 1920, Biennial Report of Attorney General, 1918-1920, page 648, to be a personal occupational license by virtue of the words "a master plumber." The Schedule as written is almost unintelligible, it provides a license for "a master plumber, steam fitter, or tin shops." The statute can be construed on the use of the words "tin shops" as easily as it can on the use of the word "master plumber." The use of the word "master plumber" probably dated back to the time when the business of plumbing

was carried on by a person who by virtue of serving a certain apprenticeship and the meeting of certain requirements by the guild or association was created a master plumber and he usually conducted his business as such with the help of certain apprenticed plumbers who had not yet attained the rank of master plumber. As plumbing is conducted now it is usually conducted as a business and the word master plumber in Alabama at this date is practically obsolete. Construing the Section in this light and especially by the insertion of the words "tin shops," it is my opinion that this is a business license rather than a personal occupational license and I so hold. The opinion of this office above referred to being the opinions of the Attorney General, 1918-1920, page 645, holding to the contrary is therefore overruled.

The word "embalmer" as used in Schedule 38, Acts 1919, page 282, Section 361, was held by this office in an opinion rendered May 8, 1929, Opinions of Attorney General, 1928-1930, page 343, to be an occupational tax and to require each embalmer to take out a license in his own name. I am in accord with this ruling.

Schedule 100, Acts 1919, page 282, Section 361, provides that each person practicing veterinary surgery shall pay an annual license of Five Dollars to the State, but no license shall be paid to the county; provided that no veterinary surgeon shall be required to pay a license until after he had practiced his profession for two years. It is my opinion that this is an occupational or professional license and should be paid by each one practicing the profession of veterinary surgery with the exception provided in the Act. The profession of veterinary surgery is a learned profession requiring special knowledge, training and aptitude and I think should be construed along with the license schedules applying to doctors, lawyers and other professions in which the nature of the act for which a license is required is such that it is individual and personal. I therefore hold that the word "person" as used in Schedule 100 requires a license of each person practicing veterinary surgery whether the same be conducted as a partnership, association or corporation or by an individual with the exception of the provision that no license shall be required until a veterinary surgeon has practiced his profession for two years.

Schedule 91, Acts 1919, page 282, Section 361, provides as follows:

> "For each railroad ticket broker, otherwise known as scalper, or other railroad ticket agent, except agents actually employed by a railroad operated in this State, in cities or towns of ten thousand inhabitants or over, one hundred dollars; in cities or towns of less than ten thousand inhabitants, fifty dollars."

From the language of this Schedule, by the use of the word "scalper" and the exclusion of agents employed by the railroad, I am constrained to the opinion that this is an occupation license and that the license should be paid by each railroad ticket broker and so hold.

Schedule 116, Acts 1919, page 282, Section 361, provides as follows: "Each person dealing in witness script, twenty-five dollars." While little

light can be derived from the language of this Schedule in view of the nature of the business, it being almost purely a personal occupation, I am of the opinion that the Legislature intended this to be a personal occupational license and that the license shall be paid by each person dealing in witness script and so hold.

Section 17, Acts 1915, page 489, provides as follows:

> "Each person other than a merchant paying an ad valorem tax on his stock of goods; who shall receive subscriptions for or shall sell or in any manner furnish books, maps, prints, pamphlets, or periodicals, shall pay, etc."

It is my opinion that this is an occupational license on each person, except merchants, as provided therein, who do the acts for which a license is provided in this Schedule. The nature of the business is such that it usually requires individual solicitation and moreover the exclusion of merchants paying ad valorem tax indicates that the legislature intended this as a personal occupational license and I so hold.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 11, 1931

Hon. Landon G. Smith,
Highway Director,
CAPITOL.

Authority of Highway Department to settle for damages.

Opinion by the Attorney General.

Dear Sir:

This is to acknowledge receipt of your letter of February 9, 1931.

You state that a certain person has filed with you, as Highway Director, a claim for damages for injury to his automobile, which claim results from the negligent running of a road machine by an employee of the Highway Department.

You inquire whether or not the Highway Department has authority to pass upon the liability in the instant case and has authority to settle the claims of persons injured through the negligence of its employees.

This is to advise you that there is no provision of law authorizing you or the Highway Department to ascertain whether or not there is any

liability in cases of this kind; neither is there any authority vested in you by law to pay any claim for damages out of the State funds, or funds of the Highway Department.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 11, 1931

Mr. R. M. Thigpen,
Workmen's Compensation Clerk,
Bureau of Insurance,
CAPITOL.

Workmen's Compensation Law of Alabama. Volunteer firemen of municipalities.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of December 22, 1930, addressed to Hon. Charlie C. McCall.

You request my opinion as follows:

1. Would volunteer firemen be included in the benefits of the Workmen's Compensation Law, When the municipality in which they live has elected to comply with the Compensation Law?

2. If so, would the compensation be computed on the basis of the remuneration they receive from the municipality while acting as volunteer firemen or upon their wages in their regular occupation?

In answer to your first inquiry, I am of the opinion that when a municipality has elected to comply with the Compensation Law, its volunteer firemen would be entitled to the same privileges and immunities as any other regular employee of said municipality relative thereto.

In answer to your second inquiry, I am of the opinion that the compensation should be computed upon the remuneration they receive from the municipality while acting as volunteer firemen, and not upon the remuneration they receive from their regular occupation. The municipality is in no way concerned with the private occupation of one who is a volunteer firemen, but is only interested in such a man as a volunteer fireman, thus the benefits derived under the Compensation Act should be computed only on that basis.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 11, 1931

Hon. T. R. Martin,
Judge of Probate,
Union Springs, Bullock County, Ala.

Election boxes—how provided.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I am in receipt of your letter of January 20, 1931, in which you state that a special election has been called in your county to elect a member to the Lower House of the Legislature, the vacancy was caused by the death of the member elected. You state further that you have only one set of ballot boxes and one box for each voting precinct and that these boxes contain the returns of the General Election held last November.

You request my opinion:

What is my duty as Sheriff in supplying the boxes for this election?

I call your attention to Section 436, Code of Alabama, 1923, which provides as follows:

"436. Number of ballot boxes, and by whom provided.—The judge of probate, sheriff, and clerk of the circuit court of each county in this state shall provide one ballot box, and where it is deemed necessary, shall provide more than one and not more than three, at each place of voting."

It is my opinion that if the time has not expired for the destroying of the ballots of the November election it will be the duty of the Probate Judge, Sheriff and Clerk of the Circuit Court of your County to provide other boxes for this Special Election under the statute quoted above.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 12, 1931

Hon. S. H. Blan,
State Treasurer,
CAPITOL.

Registration of claims against special funds such as Federal Aid on Road Projects.

Opinion by the Attorney General.

My Dear Sir:

I am in receipt of your letter of February 10th, in which you enclose a letter from the State Highway Department. The letter from the State Highway Director and Commissioner suggests a certain manner in which the special fund of the Highway Department should be handled by the State Treasurer in view of a recent Act of the Legislature known as the Registration Law, approved January 30, 1931. You inquire whether or not it is legal for you to register claims against and warrants of the State, against the special funds provided, or coming into the Treasury, for highway purposes.

It is also proposed that the State Auditor issue a no due date warrant payable to the person having the claim against the State growing out of the contract with the State Highway Department, which warrant is to be registered and paid as the funds of the State will permit.

It is also suggested in the letter from the Highway Director that the State Highway Department take care of the bookkeeping which arises in the payment of claims against funds to be expended by it in the construction and maintenance of public roads and bridges.

This is to advise you that all claims against any special fund coming into the State Treasury should be by you registered against the particular fund out of which the claim must be paid. All warrants drawn in favor of a person having a claim to be paid out of a special fund of the State, should be registered against that fund and should be paid in the order of its registration as a claim against the particular fund out of which it is payable. For instance, when the Highway Department certifies funds into the State Treasury which have been turned over to the Highway Department by the Federal Government, to be used on a Federal Aid Project, the claims growing out of the construction of this project should be registered in the order in which they are presented, and should be paid in the order in which they are registered out of the particular monies which have been advanced by the Federal Government for the construction of the particular project.

So also should all claims against funds subscribed or donated by the County for the completion of the particular road Project be registered against the particular funds donated or subscribed by the County. I realize that this will require you to maintain a system of bookkeeping which will indicate clearly out of which fund the particular claims must be paid and also do I realize that you are required to take care that no claims, not payable out of the special fund in question shall be paid out of the same.

I find no authority of law to authorize the State Highway Department or any other Department of State Government, other than your Department to superintend the registration of any claims or warrants against

the State. The recent Act hereinbefore referred to, makes it your duty to register claims presented.

I find no objection to the registration of all claims growing out of contracts previously entered into, that is, prior to January 30, 1931, at this time, or at any time the same are presented, in order that they may be paid in the order of their registration, when funds become available for this purpose. However, when the special funds are insufficient to pay all of the claims so registered, and those claiming money from the State must look to other funds of the State for their payment, such claims against other funds of the State must be paid only in the order of their registration with other claims against such funds in the treasury not specifically appropriated to a particular purpose.

If, at the time proper claims and vouchers are presented to the State Auditor for moneys due the claimants, he sees fit to issue a "no due date" State warrants, I can find no legal objection to his action in this respect. However, the "no due date" warrant can take no precedence over the registered claim. I conceive that the registration of the claim is sufficient to establish the right of the claimant, and when the funds are available, the claims against either the special funds or other funds should be paid in order of the registration of such claims or warrants. Under all circumstances, it is your duty to register all claims and warrants against the State.

Obviously, the State Auditor is without authority to draw a warrant against any special fund in the State Treasury, for claims not arising in the carrying out of the purpose for which the special fund is maintained, and clearly you are without authority to pay monies out of a special fund on claims or warrants which were not charges against this particular fund.

It is very clear to the writer that there should be no postponement in the payment of claims arising against Federal Aid funds in the State Treasury. It is equally clear that claims against funds, subscribed by counties and certified into the treasury, should not be postponed in their payment. However, any claim against a special fund must be paid only in order of its registration, and where the special funds are insufficient, the claims against "other funds of the State," should be paid only in its order of the registration of all claims against such other funds of the State.

I hope the foregoing expression will furnish you the desired information.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 13, 1931

Hon. McK. Lovett,
Tax Collector,
Double Springs, Winston County, Ala.

Courts of County Commissioners—furnishing stamps to County officials.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of February 9, 1931, relative to the duty of a county to furnish stamps to county officials.

In answer to your inquiry, I am of the opinion that it is the duty of the Court of County Commissioners, Board of Revenue or other like governing body to furnish stamps to certain county officials for their official use. Same is done under the authority of Section 9604, Code of Alabama, 1923, as amended September 6, 1927, (General Acts 1927, P. 693), which provides as follows:

> "The Judge of Probate, Tax Assessor, Tax Collectors, Register of the Circuit Court in Equity, Clerk of the Circuit Court, Sheriff and the County Treasurer or custodian must be allowed reasonable expenses for suitable books, stationery, **postage stamps used** exclusively for official business, and telephones to be paid for by the county, on the approval of the Court of County Commissioners, Board of Revenue or other like governing body, and the seal of office, to be paid for by the County."

Said Section, in my opinion, does not mean that the money shall be advanced to the various county officials. After the goods have been purchased, the bill should be presented to the Court of County Commissioners, Board of Revenue or like governing body for their approval and then paid by the County.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 13, 1931

Hon. Roy Sanderson,
Clerk of the Circuit Court of Marion County,
Hamilton, Alabama.

Conviction on appeal from Mayor's Court—disposition of fine, cost and solicitors' fees to be charged.

Opinion by Assistant Attorney General Otts.

Dear Sir:

Your letter of February 7, 1931, received. I note you make statement of fact as follows:

> Wesley Ridings was prosecuted before the Mayor of the town of Hamilton, Alabama, in the name of the State, (under the authority of Section 1945 of Code of 1923) for the offense of Violating the Prohibition Law, and he appealed to the Circuit Court and was there convicted and sentenced for fine of $50.00 and costs and three months additional hard labor for Marion County, Alabama.

You also make inquiries as follows:

> 1. What should become of fines or proceeds of the sentence in this case and similar cases appealed from Recorder's Court where prosecuted in name of State?
>
> 2. In cases where a fine is paid on conviction on appeal to Circuit Court from Recorder's Court where action is in name of the State, what disposition shall I make of the fine?
>
> 3. What cost shall be charged in the Circuit Court?
>
> 4. What solicitor's fee shall I charge?
>
> 5. Must two solicitors' fees be charged in such cases?
>
> 6. Must the witness fees in the Circuit Court be paid by the county or by the town?
>
> 7. Does the town attorney get the solicitor's fee when convicted on appeal to the Circuit Court?

Answering your questions numbered 1 and 2, would say that under Section 4038, Code of Alabama, 1923:

> "Fines to go to county, and judgment accordingly.—All fines and forfeitures shall be paid in money, and shall go to the county in which the indictment was found, or the prosecution commenced, unless otherwise expressly provided; and judgment therefor must be entered in favor of the State, for the use of the particular county."

Answering your question 3 will advise that fees of Circuit Clerk in criminal cases are fined by Section 3739 of Code and of sheriff by Section 3741 and of witnesses by Section 3762.

Answering question 4, this depends of course on the nature of the offense. That is, whether the violation of prohibition law was by having in possession, or by a sale, barter or exchange of prohibited liquors. If the conviction was for having in possession prohibited liquor, then the solicitor's fee would be $10.00, but if it were for the sale, barter or exchange of spirituous, vinous, malt or intoxicating liquors, then the solicitor's fee would be $30.00.

Answering your inquiry, number 5, I would refer you to Opinions of the Attorney General, 1920-1922, on page 181:

> "Where a recorder or mayor exercises this latter jurisdiction, the case should be docketed by him as all state cases are docketed, that is as the State of Alabama v. John Doe. If the defendant who is tried by the recorder or mayor for the violation of a State law, takes an appeal to the circuit court, it would of course be the duty of the Circuit Solicitor to prosecute such case upon the appeal. Applying your second question above set out to the appeal of a state case from such recorder or mayor sitting with the jurisdiction of a county court, it is my opinion that a solicitor's fee in the circuit court would be chargeable. I do not think a solicitor's fee would be chargeable, however, as a part of the costs in the recorder's court, unless there is a provision of law authorizing or directing the solicitor or some deputy solicitor or county solicitor to prosecute such cases before the recorder or mayor."

Answering inquiry 6, witness fees in the Circuit Court are a part of the costs and should be paid out of costs paid or collected, or if not collected, then by the County.

Answering inquiry 7, see answer to No. 5 above.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 13, 1931

Hon. R. A. Moody, Sheriff,
Guntersville, Marshall County, Alabama.

Jails—Prevention of escape therefrom.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of February 5, 1931, in which you request my opinion as follows:

What steps should be taken by a sheriff when there is reason to apprehend an escape of prisoners?

In answer to your question, I refer you to Sections 4813 and 4814, Code of Alabama, 1923, giving the sheriff authority, and making it his duty to summons as many guards as may be necessary to prevent an escape.

It is true that sheriffs have the right to exercise their discretion not only as to the means taken to apprehend the person named in the warrant, but also as to the means necessary to keep him safe and secure after such apprehension until lawfully discharged, unless this discretion is abused through malice, wantonness, or a reckless disregard for, and selfish indifference to, the common dictates of humanity.

Shields v. State, 104 Ala. 35,
State v. Clousmier, 57 N. E. 541,
Firestone v. Rice, 35 N. W. 885.

However, it is my opinion that guards should be secured before any other measures are resorted to in order to prevent an escape.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 13, 1931

Hon. Jos. R. Bell,
County Solicitor,
Hayneville, Lowndes County, Ala.

Individual who buys gas in bulk from without the State, and withdraws same for his own use subject to gasoline tax.

Opinion by Assistant Attorney General Moore.

Dear Sir:

You ask: "Will a private individual who buys gas in bulk from out of the State of Alabama, and ships same into this State, and stores this gas in a tank for his own private use—not for re-sale—be required to pay a gas tax?

Section 2, Acts 1927, p. 16, provides as follows:

"Every distributor, retail dealer or storer of gasoline as herein defined shall pay an excise tax of two cents per gallon upon the sell-

ing, distributing or withdrawing from storage for any use gasoline as herein defined. * * *"

Section 3, Acts 1927, p. 326, amending the Gasoline Act approved February 10, 1923, also provides that:

"Every distributor, retail dealer, or storer of gasoline as herein defined shall pay an excise tax of two cents per gallon upon the selling, distributing or withdrawing from storage for any use gasoline as herein defined in this State. * * *"

When you refer to "gas" in your letter, I presume you mean gasoline. Under the foregoing provisions gasoline stored and withdrawn from storage for any use is subject to the tax provided by the two Acts.

It is, therefore, my opinion that under the facts set out by you, the party is liable for the gasoline tax for each gallon of gasoline withdrawn from storage.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 16, 1931

State Tax Commission,
CAPITOL.

Attention: Mr. John C. Curry.

Transfer of Judgment is not such an instrument as to require payment of filing tax required by Section 21½, Acts 1927, page 139.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I acknowledge your letter of February 11th, in which you enclose copy of instrument which provides that George W. Rendall and W. R. Young obtained judgment against one, Harold R. Hanson, in the sum of $9,686.41, and provides further as follows:

"Now, therefore, the said George W. Rendall and W. R. Young for and in consideration of the sum of Two Thousand ($2,000.00) Dollars, the receipt of which is hereby acknowledged, have held and by these presents do assign, transfer and convey to George W. Young and his assigns, all our rights, title and interest in and to the said judgment, to be collected by him for his own use, but at his risk, costs and charges."

You request me to advise you if the instrument above quoted bears the filing tax levied by Section 21½, Acts 1927.

In my opinion the instrument above quoted is not such an instrument as to require the filing tax provided by Section 21½, Acts 1927, page 139.

Section 6870, Code of Alabama, 1923, provides as follows:

> "Choses in action are not included in the words 'personal property' in this article."

In State ex rel Hamilton vs. Williams, 106 So. P. 500, on instrument similar to this transferring the vender's lien was held not to be such an instrument as to require the payment of the filing tax required by Section 21½, supra. In this case the Court said:

> "We think however, the language of the statute clearly indicates that for the imposition of this privilege tax the instrument offered for record must convey real or personal property or some interest therein. The vender's lien here assigned is not an estate or interest in land, but a mere vendor's charge, a right in equity to subject the land to the payment of the purchase price. It is in the nature of an assignment of a chose in notion."

The Court also held this instrument not to be a "bill of sale" within the meaning of the statute stating:

> "It is not a sale of an interest in property, real or personal, within the language of this act, but a mere transfer of a right to charge the real estate for the payment of the purchase price. We are persuaded this act is not to be construed as embracing an instrument of this character."

To a similar purport is the case of Garrison vs. Hamlin, 105 So. 106.

In my opinion the judgment here transferred is not a sale of an interest in property, real or personal, within the meaning of the Act, but is the mere transfer of a debt which has been liquidated by a formal court finding. By virtue of the registration and recording statutes, the creditor is given a lien on the property of the debtor, out of which the judgment may be collected. These statutes, however, do not change the essential nature of a judgment. The instrument above quoted assigns a debt and is in the nature of an assignment of a chose in action. Hence under the principles discussed in the cases cited above, I think this transfer is not such an instrument as to require payment of the tax provided in Section 21½, Acts 1927, P. 139.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 16, 1931

Hon. E. L. Hurst,
Judge of Probate,
Gadsden, Etowah County, Ala.

Constitution, Section 194½—Who exempt from poll tax.

Opinion by Assistant Attorney General Otts.

Dear Sir:

Your letter without date in which you make the inquiry: "Is a man who was drafted into service during the World War, sent to Camp and was discharged from draft on account of tuberculosis on the eleventh day after his arrival in camp entitled to poll tax exemptions under Section 194½ of the Constitution of Alabama," received.

Answering same would advise that if a man was sworn into service he would unquestionably be exempt from the payment of all poll taxes under the Section of the Constitution you refer to, but it is my opinion that if on account of his physical condition he was **discharged from draft** and never entered the service he would not be exempt. I would respectfully refer you to Opinion of the Attorney General, dated January 28, 1925, in the Biennial Report of the Attorney General, 1924-1926, page 71, where it is held:

"A holder of discharge from the draft was never fully inducted into the service and hence is not entitled to poll tax exemption."

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 16, 1931

Hon. J. C. Sessoms, Register,
Circuit Court of Covington County,
Andalusia, Alabama.

Trial Tax.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of January 21, 1931, in which you state:

"On Dec. 10, 1930, D. F. Green, Superintendent of Banks, filed his **ex parte** Petition on the Equity side of this Court, alleging that

he had under the law taken possession of the property of the Bank of Gantt, for the purpose of liquidation, that it was necessary to employ a Liquidating Agent and an Attorney, naming those he had selected and the salaries he had agreed to pay; that there were outstanding taxes and possibly liens or preferred claims, that conditions might render necessary the employment of other assistants; and praying that the salary and fees he had agreed to pay be fixed as agreed, that he be permitted to pay taxes, liens and preferred claims, and to employ assistants as might become necessary.

"On the next day the Court rendered a decree granting the prayers of the petition.

"Costs, including $3.00 Trial Tax, were collected.

"On Jan. 21, 1931, Claude Wright, as Liquidating Agent of the Bank of Gantt, who was named by D. F. Green in his Petition of Dec. 10, 1930 as employed by him, through E. O. Baldwin, the Attorney who had been employed, filed another Petition in said Court, alleging indebtedness of said Bank of Gantt to certain other Banks secured by collateral greatly in excess of the debts, and praying for authority to recapture said collateral, using any money he now has or may hereafter collect, for that purpose.

A Decree was rendered granting the Prayer."

You request my opinion:

Is it my duty to collect trial tax in each of the above matters or should I collect only one trial tax?

It is my opinion that you should collect a trial tax in each instance. The two petitions are separate courses of action. The one is in nowise depending on the other. It is true they grow out of the liquidation of the Bank but one is by D. F. Green, Superintendent of Banks, the purpose of which was to set in motion the machinery of liquidation.

The second proceeding was by the Agent of Green, viz., liquidating agent of the Bank which had to do with the adjustment of the assets of the Bank and does not have any connection whatever with the original suit filed by Green.

The conclusion which I reached above is based on Section 4½ of an Act approved September 15, 1919, p. 284, which is as follows:

"Section 4½. That a trial tax of three dollars be, and the same hereby is, imposed in each case, civil, criminal and equity, which hereafter goes upon the docket of any circuit court in this State, to be taxed and collected as other costs, and when collected, to be paid by the clerk of such court, into the general funds of the State treasury."

Biennial Report of Attorney General 1926-1928, p. 169.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 17, 1931

Hon. Walter K. Smith,
Chief Examiner of Accounts,
CAPITOL.

Officers liable to county for illegal expenditures in payment of premium on bond of the county depository.

Opinion by the Attorney General.

Dear Sir:

This will acknowledge the receipt of your letter of February 16th, in which you state as follows:

That premiums on the bond of county depositories have been paid out of the county funds aggregating $1,475.00. You inquire:

First: Whether or not there was any authority of law authorizing the use of the county money for such purpose?

You ask, secondly, are the banks acting as county depositories individually liable to the county for the money wrongfully paid to them and received by them without authority of law?

You also inquire if there is a liability to the county on the part of the officer issuing warrant in payment of the claim filed by said banks for the premium on such depository bonds?

You further inquire whether or not the sureties on the depository bond furnished by the depository, are liable to the county for the wrongful receipt or disbursement of funds of the county by the depository, in paying the premiums on its bond?

You invite my attention to certain sections of the Code of 1923, viz: Sections 312 to 324.

In answering your first inquiry, I am of the opinion that any expenditure for the payment of the premium on the bond of the county depository was illegal and it is not authorized by law.

Section 2658 of the Code of 1923 is the only authority authorizing the county to pay for the premium on bonds made by county officers with the surety company, and this Section of the Code may not be extended in its contemplation beyond the bonds of **county officers.**

It is clear that a depository, qualified as the Act prescribes, is not the public officer and is not merely a county treasurer by another name. The depository is but a contractee. It pays the county interest on the daily balances and engages to keep and pay out the funds lawfully committed to its care. As has been said, indeed in the light of governmental history, it is not perceivable how a corporation could be constituted a public officer. The clear purpose of the Act of September 15, 1915, Section 312, Code of Alabama, 1923, was to abolish the office of county treasurer in certain counties and to create a merely contractural agency to perform the functions theretofore performed by the abolished officer.

Compton v. Marengo County Bank, 203 Ala. 129.

In answer to your second inquiry, I am of the opinion that the banks who have received this money from the county for the purpose of paying the premium on their bond as county depository, are liable to the county for money had and received.

I am also of the opinion that the officer issuing the warrant for the payment of the premium on bond of such depository is liable to the county for the wrongful disbursement of public funds and that the sureties on his official bond are liable to the same extent that he, as principal is.

Section 321, Code of Alabama, 1923.

In answer to your last question, I am of the opinion that the sureties on the bond of the depository are liable to the county for funds improperly paid out by the depository. In the instant case, the depository paying or reimbursing itself with funds of the counties for the premium on the bond they are required by law to furnish are presumed to have known that this was an illegal expenditure of the counties' money. They had contracted to keep this money safe. They had knowledge that they were paying themselves funds of the county without authority of law. In view of the fact that they knew that the warrants were drawn for the purpose of paying the premium on the bonds they were required to furnish.

County depositories may maintain all actions and proceedings which county treasurers may maintain and all actions and proceedings may be brought against county depositories which can be brought against county treasurers.

Section 319 of the Code of 1923.

The purposes for which this warrant was drawn lie peculiarly within the knowledge of the depository. They and their sureties must be bound

by this illegal acceptance of funds of the county. The bank or banks designated as county depositories for county funds shall be charged with all the duties and subjected to the same liabilities insofar as the safe keeping and payment out of the funds of the several counties are concerned, as were imposed by law upon County Treasurers.

I hope the above expressions furnish you the information you desire.

Section 316 of the Code.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 17, 1931

Hon. E. Raymond Murphy,
Deputy Solicitor,
Florence, Alabama.

Solicitors: Attorney to Commissioners Court.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of February 13, 1931, in which you request an opinion from this office on the following matters:

1. Can a County Solicitor also receive compensation as an advisory attorney to the Commissioners Court?

2. Can a County or Deputy Solicitor charge a fee for prosecuting bastardy cases before justices of the peace?

In answer to your first question, I am of the opinion that under Section 5498, Subdivision 8 of the Code of Alabama, 1923, it is the duty of such County or Deputy Solicitor to give official opinions to the Court of County Commissioners when so required of him. I also refer you to Section 5024, Code of Alabama, 1923, which expressly prohibits such county officer from taking any contract for work or services of the county, or from being employed in any way under such contract. I also refer you to Biennial Report Attorney General 1928-1930, p. 295.

In answer to your second inquiry, I am of the opinion that such County or Deputy Solicitor cannot accept a fee for representing the plaintiff in a bastardy proceeding in a justice court.

Biennial Report Attorney General, 1926-1928, p. 125.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 17, 1931

Hon. W. G. Batson,
Judge of Probate, Chambers County,
LaFayette, Alabama.

License—Doctors—no exemption from by reason of physical disability.

Opinion by Assistant Attorney General Otts.

Dear Sir:

Answering your letter of February 14th, in which you set out:

"In regard to Dr. A. C. Smith's license.
"I am enclosing herewith a copy of the resolution passed by the Medical Board of Chambers County; is this any reason for exemption; and under the law is a disabled World War veteran exempt from license?"

will respectfully advise:

First, all doctors are to be licensed according to Schedule 57 of Section 334, Acts of 1927, page 139, Section 9, which is as follows:

"Schedule 57. Doctors, medical.—Each person engaged in the practice of medicine in cities or towns of over Five Thousand inhabitants shall pay an annual license of Twenty-Five Dollars ($25.00); in cities or towns of less than Five Thousand and more than one Thousand inhabitants, Ten Dollars ($10.00); in all other incorporated towns, Five Dollars ($5.00), but no license shall be paid to the county. If such business is conducted as a firm or as a corporation in which more than one doctor is engaged, each doctor so engaged shall pay the license as above stated, provided that the license imposed by this Section shall not apply until such doctor shall have practiced his or her profession as long as two years."

There are no exemptions from this license and I respectfully refer you to an opinion of the Attorney General dated August 27, 1927, and also opinion of the Attorney General dated October 8, 1927, which latter opinion holds that the only exemptions to doctors is for those who have practiced less than two years.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 18, 1931

Mr. W. R. Carothers,
Superintendent of Education,
Marion, Perry County, Alabama.

Schools—Statement of receipt and disbursements, annual report —Express and freight charges.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of February 12, 1931, in which you request an opinion from this office on the following matters:

1. Are the expenses of printing the statement of the receipts and disbursements of the County Board of Education and of the annual report required by Section 123 of the Alabama School Code, 1927, to be paid by the Court of County Commissioners?

2. Must the Court of County Commissioners pay express and freight charges on school supplies sent to the office of the County Superintendent of Education from the State Department of Education, or elsewhere, for distribution among teachers of the county?

In reply to your first inquiry, I am of the opinion that the expenses of printing the statement of receipts and disbursements and of the annual report required by Section 123, of the Alabama School Code, 1927, must be paid for out of the educational fund of the county by the County Board of Education and not by the Board of Revenue or Court of County Commissioners.

However, the paper upon which the annual report is printed, should be paid for by the Court of County Commissioners.

Biennial Report of Attorney General, 1928-1930, pp. 151, 154, 769.

In answer to your second question, I am of the opinion the Court of County Commissioners cannot pay the express and freight charges on school supplies sent to the office of the County Superintendent from the State Department of Education for distribution among the teachers of the County. This is not provided for by Section 169, Alabama School Code, 1927, as it is not supplies for County Superintendent. The County Superintendent, upon authorization of the County Board of Education can pay this out of the Educational Funds not appropriated for specific purposes.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 19, 1931

The State Tax Commission,
State Capitol,
Montgomery, Alabama.

Attention of Mr. S. C. Crockett:

Municipalities—may levy a license tax on businesses without the corporate limits but within the police jurisdiction.

Opinion by the Attorney General.

Dear Sir:

This is to acknowledge the receipt of your letter of February 18th, in which you refer to an opinion in the Biennial Report 1928-1930, p. 516, of the office. This opinion refers to the levying of licenses by municipalities outside of their corporate limits but within the police jurisdiction of such municipalities. You inquire whether or not such a statute is constitutional.

You mention the fact that the opinion of the Attorney General referred to above does not hold that the municipality may levy the license tax without the corporate limits.

I am of the opinion that a municipality may levy and collect a license or privilege tax on any business done within the police jurisdiction, but without the corporate limits.

General Acts 1927, p. 674.

The levy of the license for conducting a business within the police jurisdiction but without the corporate limits is a valid exercise of the police power of the city.

Walden v. City of Montgomery, 214 Ala. 409.

Apparently, there is error in the opinion in the Biennial Report of 1928-1930, p. 516, wherein the word "within" was used rather than the word "without" the corporate limits. The instant opinion is to govern you in this matter.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 20, 1931

Hon. Joe Rollins,
Sheriff, Houston County,
Dothan, Alabama.

1. Services of janitor at jail may be paid by the Board of Revenue or Court of County Commissioners and the same constitutes a preferred claim.

2. The services of a night guard at the jail may be paid by the Board of Revenue or Court of County Commissioners.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state as follows: "The Board of Revenue of Houston County for the current fiscal year and for several years forms its budget and this year the following items appear:

"Item 6: For allowance to Sheriff Janitor at Jail $600.00.

"Item 23: For allowance to Sheriff Night guard Jail $900.00.

You state that from month to month a claim duly sworn to in the amount of $50.00 per month and $75.00 per month for night guard has been presented to and filed with the Board of Revenue. The Board of Revenue passes such claims and their allowance is recorded in the minutes of the Board. The Judge of Probate as Chairman of the Board has regularly drawn a warrant upon the County Treasurer or Depository from month to month and all these warrants have been paid until the past three or four months.

You request me to advise you:

1. Whether or not it is legal for the Board of Revenue to make the allowance in its budget.

2. Whether or not it is legal for the Judge of Probate to draw the warrant.

3. Whether or not it is legal for the Treasurer or Depository to pay the warrant.

4. Whether or not the warrants or claims are preferred claims.

In answer to your first question, I advise that while in its annual estimate of expenses and preparation of its budget, the Board of Revenue may consider and include such item, it is my opinion that before the same can be paid the claim for each month's salary must be properly presented,

audited and allowed in the manner provided by Sections 224 and 225 of the Code of Alabama, 1923.

In answer to your second question if such claims are duly audited and allowed by the Board of Revenue, it is legal for the Judge of Probate to draw the warrant on the County Treasurer or Depository for payment of same.

Answering your third question, I advise that it is my opinion that if the legal requirements as to presentment and allowance are complied with and the warrant is properly drawn, it is legal for the Treasurer or Depository to pay such warrants.

Section 4866 provides:

"Janitor service and bathing facilities.—The court of county commissioners, board of revenue, or city council, shall provide adequate janitor service for, and shall enforce cleanliness in their respective jails; shall provide bathing facilities separate for negroes and whites, males and females, soap and towels, hot and cold water, clean and sufficient bedding, and with clean clothes when the prisoners are not able to provide them."

Section 4878 provides:

"Expenses of maintenance, etc., how paid.—The expense incident to the construction maintenance, sanitation, healthfulness and hygiene of each county jail, prison, and almshouse in this state shall be paid out of the funds of the county in which such institution is located, and of the town or city, if the institution be a town or city institution."

These Sections authorize the employment of a janitor for the jail and provides that the "expense . . . . shall be paid out of the funds of the county in which such institution is located."

Section 4879 of the Code of 1923 provides:

"Deputy or watchman must be in attendance.—Prisoners shall not be confined in any jail or prison in this state when such jail or prison is not provided with a deputy watchman or attendant, whose duty it shall be to watch the jail or prison at night for the prevention of escapes, and fire, and to aid in case of sickness among the prisoners, and who shall have access to the jail or prison and to the prisoners. If the state prison inspector is satisfied, after inspection, that the construction and management of a jail is such as to render a night watchman unnecessary, he may by written order to the sheriff suspend the appointment of said watchman, this order to be subject to revocation at the discretion of the prison inspector. The sheriff, in case of a county jail, or the proper governing authority, in case of a municipal jail, shall appoint, direct and control said deputy,

watchman or guard, and the court of county commissioners or board of revenue, or the proper municipal governing authority, as the case may be, shall fix a reasonable salary and the same shall be paid out of the funds of the county or of the municipality, if it be a town or city jail, in which the jail is located."

This Section, in my opinion, authorizes the employment of a night guard and the payment of his salary by the Board of Revenue. It is of course the duty of the Board of Revenue when it audits the claim to determine that the State Prison Inspector by written order to the Sheriff has not suspended the appointment of such watchman, and in my judgment the minutes of the Court should so show.

Answering your fourth question, I advise that Subsection 2 of Section 231 providing for preferred claims against the county and the order of their priority provides as follows:

"Expenses of the courts; claims of grand and petit jurors, extra bailiffs allowed by the court for services during the term, and expenses of board and lodging of jurors engaged in trial of cases where ordered by the court to be kept together, as shown by the certificates issued by the clerk to them; claims of the court reporters as shown by the certificates issued to them by the judge of the circuit, fuel; water; lights; and janitor's services at the courthouse and jail."

It therefore appears that the claims for janitor service at the courthouse and jail are preferred claims to be paid in the order provided by Section 231 of the Code of 1923.

I find no provision making a claim for services as night watchman or night guard at the jail a preferred claim.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 20, 1931

Hon. W. C. Batson,
Judge of Probate, Chambers County,
LaFayette, Alabama.

De facto officers; right to compensation; de facto officers who hold over entitled to compensation, provided such de facto officer does not hold over wantonly or recklessly and provided such de facto officer holds over by authority of law.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I acknowledge receipt of your letter of February 9th, which reads as follows:

> "Our former Treasurer for the County, Mr. O. C. Christian, whose bond expired December, 1930, has filed a claim for salary for the month of January; as a matter of fact, the new treasurer has just made his bond Feb. 4th, and Mr. Christian did a good bit of work during the month of January, as he had to finish the years business and prepare the statement for publication of the last six months business; can we legally pay this claim?"

I assume from your letter that Mr. Christian performed the regular duties of the County Treasurer during the month of January, 1931. The Office of County Treasurer has been abolished in your County. Since you do not mention a depository, I assume that your County Treasurer was designated under Section 322, of Article 2, of the Political Code of 1923. This Section provides that the Court of County Commissioners may designate some individual who may act as Treasurer "under such terms and conditions as may be fixed by said Courts of County Commissioners or Boards of Revenue." We assume that the order spread upon the minutes of the Commissioners Court, showing Mr. Christian's designation as County Treasurer, recites that Mr. Christian shall hold the office until his successor is appointed and has qualified.

Under the facts stated above, during the month of January, 1931, Mr. Christian acted in the capacity of a defacto officer. There are two ways in which an officer may become a de facto officer. First, an officer may act in the capacity of a de facto officer by authority of law. Next, an officer may act in the capacity of a de facto officer when the officer holds the office without break, and without question by the public, exercising the functions of the office by acquiescence. So, under either theory, he was a de facto officer.

Not all de facto officers are entitled to compensation. In many jurisdictions, the general rule is that a de facto officer cannot recover compensation for the reason that he cannot himself acquire rights based upon his defective title. In a very general way, this is the rule in Alabama, although our Courts have applied the rule in a different way. Our Courts have held that a de facto officer is entitled to compensation, in cases where de facto officers do not hold the office recklessly or wantonly, and hold the office by authority of law. Under the facts stated above, I am of the opinion that Mr. Christian did not hold the office recklessly or wantonly. Since the order of the Commissioners Court recites that he shall hold the office until his successor is elected and qualified, I think he held the office during the month of January by authority of law. I am, therefore, of the opinion that he is entitled to his pay for the period just mentioned.

Mechem on Public Officers, Sections 317, 318, pages 212 and 213;

Cary v. State, 76 Ala., pages 78 to 83.

Mechem on Public Officers, Section 331, page 221;

Reynolds v. McWilliams, 49 Ala. 552;

Flournoy v. Clements, 7 Ala. 535;

Opinion of Attorney General August 12, 1922, Report of Attorney General 1920-1922, page 477,

Opinion of Attorney General, Report of Attorney General, 1926-1928, page 623.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 21, 1931

Hon. B. M. Miller,
Governor,
CAPITOL.

State warrants may be issued for past due obligations notwithstanding the fact there is at present no money in the Treasury with which to meet the same.

Interest on these obligations which are past due may be paid out of the Governor's Interest Contingent Fund, from the date such obligation became due.

Opinion by the Attorney General.

My dear Governor:

This is to acknowledge the receipt of your letter of February 20, 1931, in which you state that the State of Alabama now owes obligations which are past due. You also inform me that there is no money in the Treasury with which to meet them.

You inquire whether or not the State Auditor may legally issue warrants for these accounts and provide for their payment at a future date, at a time when he anticipates there will be funds in the Treasury to pay such past due accounts.

You also inquire whether or not interest on these accounts, which are past due, and for which warrants have been issued, may be paid out of the Governor's Interest Contingent Fund appropriated by the Legislature in an Act approved February 20, 1931.

In answer to your first question, the writer is of the opinion the fact that there is at the present time no money in the Treasury with which to meet obligations of the State which are past due, presents no legal objection to the State Auditor drawing warrants for such indebtedness of the State providing for their payment at a date when he anticipates there will be sufficient funds in the State Treasury with which to pay said warrants. Obviously, had there been sufficient funds in the Treasury, the warrants would have been drawn upon the presentation of the claim against the State. The inquiry here presented is to some extent analogous to an inquiry presented in the earlier part of this month.

Opinion of the Attorney General to the Governor, Feb. 2, 1931.

In answer to your second inquiry, I see no objection to the use of the Governor's Interest Contingent Fund for the purpose of paying the interest on this indebtedness since it became due.

All contracts, express or implied, for the payment of money, bear interest from the date such money should have been paid.

Section 8564, Code of Alabama, 1923.

If the State impliedly promises to pay money from the date such payment should have been made, there is no reason why a debt of the State should not come within the influence of the above mentioned Section of the Code.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 21, 1931

Hon. E. J. Garrison,
Judge of Prabate,
Ashland, Alabama.

1. Jurors in inquisition proceedings are not entitled to mileage.

2. Witnesses in inquisition proceedings are entitled to mileage.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of February 12, 1931, in which you ask:

1. Are jurors in cases of inquisition of lunacy entitled to mileage in such cases?

2. Are witnesses in such proceedings entitled to any mileage? Answering your first inquiry, I advise as follows:

Section 7294 of the Code of 1923, provides:

"Pay of jurors in probate court.—Jurors in the probate court are entitled to the same pay as in the circuit court, **except as herein otherwise provided,** upon the certificate of the judge of probate stating the number of miles traveled, and the amount of compensation to which they are entitled, and be paid in the same manner as jurors in the circuit court."

Section 7293 of the Code of 1923, provides:

"Pay of jurors on inquisition of lunacy.—Jurors summoned under the provisions of this Code to pass upon the soundness of mind of a person, with a view to the appointment of a guardian, are each entitled to receive three dollars per day of attendance, to be paid on the certificate of the judge of probate, out of the county treasury."

Section 7291 of the Code of 1923, provides:

"Jurors in circuit courts.—Regular and tales jurors serving in the circuit court in civil and equity cases are entitled to the same fees and allowances as provided by law for criminal cases, to be evidenced and paid in the same manner."

Section 3760 of the Code of Alabama, 1923, (Criminal Code), provides:

"Regular jurors' fees; proved by oath of juror; certificate of clerk. —Regular jurors, grand and petit, are entitled to three dollars for each day's services, five cents for each mile traveled in going to and returning from court, and ferriage and toll, to be proved by the oath of the juror before the clerk of the court, whose duty it is to give each juror a certificate, stating therein the number of days he has served and the number of miles he has traveled, the amount of ferriage and toll he has paid, and the amount of compensation to which he is entitled; which certificate shall be receivable in payment of county taxes, and other county dues, and payable out of the county treasury."

Section 8106 of the Code of 1923, provides:

"Jury summoned; writ of arrest.—The judge of prabate must issue a writ directed to the sheriff, commanding him to summon twelve disinterested persons of the neighborhood for the trial thereof, and also issue subpoenas for witnesses, as the parties may require, returnable to the time of trial; he must also issue a writ directed to the sheriff, to take the person alleged to be of unsound mind, and, if consistent with his health or safety, have him present at the place of trial."

Section 8107 of the Code of 1923, provides in part as follows:

"* * * If any of the jurors are excused from serving, fail to attend, or are set aside for any cause, their places may be supplied from the bystanders."

All of these sections must be construed together in determining whether or not jurors in cases of inquisition of lunacy are entitled to mileage.

It will be observed that Section 8106 provides that a writ shall be directed to the Sheriff commanding him to summon twelve disinterested persons of the neighborhood for the trial thereof.

Section 8107, provides that if any of the jurors are excused, fail to attend or are set aside for any cause their places may be supplied from **bystanders.** Construing these Sections along with Section 7294, which provides that jurors in such proceedings shall receive the same pay as in the Circuit Court except "as herein otherwise provided," affords the conclusion that Section 7293 providing $3.00 per day for jurors in such cases is all the pay to which such jurors shall be entitled. The provision in Section 7294 "except as otherwise provided" coupled with the provisions of Sections 8106 and 8107, providing that they shall be from the **neighborhood,** or in case of absence of any of those summoned, from the **bystanders,** indicate that the Legislature assumed that there would be no distance traveled or mileage made and hence no need for the payment therefor.

It, therefore, appears that the per diem of $3.00 as provided by Section 7293 is exclusive of other fees and constitutes all the pay to which jurors in such cases are entitled.

Answering your second question, I advise:

Section 7241 of the Code of Alabama, 1923, provides:

"Fees of witnesses in probate court and inquisition proceedings.—Witnesses in proceedings in probate court are entitled to the same fees as in circuit court, to be taxed as costs, except in inquisition proceedings, in which they shall receive seventy-five cents per day, to be taxed and collected the same as fees or compensation of jurors in such cases, as provided by section 7293 of this Code."

Section 7233 of the Code, 1923, provides:

"Fees of witnesses for mileage and attendance.—Witnesses are allowed one dollar and fifty cents per day in civil cases; also five cents per mile for each mile to and from their residence by the usual traveled route, and all necessary ferriage, tolls of turnpikes and toll bridges, whether attending under subpoena, or at the request of the party.

It, therefore, appears that witnesses in inquisition of lunacy proceedings are entitled to the same fees as in the Circuit Court, except the per diem is 75 cents instead of $1.50 as provided in the Circuit Court. There is no other exception and in my opinion it follows that witnesses in such proceedings are entitled to mileage as provided by Section 7233.

You also ask if under the terms of Section 3933 requiring officers to take security from a bank in which they deposit state and county funds, would a personal bond or bond signed by individuals be acceptable provided the sureties were satisfactory. I presume you refer to Section 3973 as Section 3933 relates to a different subject entirely. I beg to enclose opinion of this office under date of January 12, 1931, which I believe answers your inquiry fully. If you desire further ruling on this question, kindly advise me.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 24, 1931

Hon. John S. Mooring,
Tax Commissioner,
State Tax Commission,
CAPITOL.

Licenses—To conduct moving picture show, under Schedule 107, Revenue Act 1919, not authority to conduct theatre, vaudeville or variety show under Schedule 106 of said Act.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of February 18, 1931, inviting attention to Schedules 107, 106 of Section 361, Revenue Act approved September 15, 1919, (General Acts 1919, pp. 395, 433, 434) and to an opinion of this office concerning this matter, dated March 3, 1923 (Opinions Attorney General 1922-1924, p. 47). You state that, since the rendition of the aforecited opinion, the method of conducting theatres and performances has undergone some change.

You request my opinion:

1. Would what is recognized as such and so licensed as a moving picture show under schedule 107, also be liable for an additional license under schedule 106 when between the regularly shown pictures there are put on, also regularly, certain vaudeville acts, such as dances, songs, sleight of hand performances, etc.?

2. Would one engaged in conducting what is regularly known as a theatre, vaudeville, or variety show, and so licensed, be also liable for a license under schedule 107 (moving pictures) in the event that, following the regular vaudeville or variety acts put on in such theatre or between such acts, there was also regularly shown moving pictures?

Answer to both of your questions is in the affirmative.

Your attention is invited to Section 363 of the Revenue Act, supra, the pertinent part of which is as follows:

"* * * such license * * * shall (not) entitle the holder thereof to carry on any other business or do any other act than that named therein. * * * "

A license to conduct a moving picture show is not a license to conduct a vaudeville performance or act as part of the show, and vice versa.

A license must be taken out for each business or act covered by the schedules.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 24, 1931

Hon. Jno. S. Mooring, Commissioner,
State Tax Commission,
CITY.

Licenses—Automobiles—transfer of license tags.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have yours of December 17, 1930.

You request my opinion:

1. Where A, who resides in Chilton County, pays his ad valorem and license tax and precures his tag in this county, then sells the car and transfers the tag to B, who is a resident of Autauga County, will the license be sufficient for the remainder of the year for which issued for the purchaser in Autauga County.

2. Where A, who resides in Chilton County, pays the ad valorem and license tax and procures his tag in Chilton County, then sells the

tag but not the car to a resident of Autauga County, where should the transfer of the tag be made, if at all.

3. In cases where no tax is due on car of transferee B, can the probate judge of Chilton County transfer A's tag to B.?

In answer to your first question will state the transfer is legal. The ad valorem and license tax has been paid by A. There is no transfer from one car to another and, therefore, no concern as to ad valorem tax. The fact that B is a resident of another county, in this instance is immaterial. The Probate Judge of A's county should make the transfer on A's application.

In answer to your second question will state, in my opinion, it is the spirit, purpose and intent of the law that where the original licensee desires to transfer his automobile tax to another person, and not transfer the car with it, then the transferee must, at the time, be a resident of the county of such original licensee and before the transfer can be made by the probate judge who originally issued it, the transferee must have paid all ad valorem tax due on the car of such transferee for the preceding year, and must produce and surrender to such probate judge, the tax collector's receipt evidencing that fact.

Careful examination of the provisions of Section 12, Act approved September 13, 1923 (General Acts 1923, p. 284), and the Section 18, Act approved July 22, 1927, (General Acts 1927, pp. 158, 159), as to transfers of tags from person to person, indicates, in my judgment, that to hold such transfers can be effected except by the original licensee to a person who is at the time, a resident of the county where the licensee legally procured the license in the first place, would lead to endless confusion in the administration of the law.

In answer to your third question, in view of my answer to your second question, it is my opinion that the probate judge of Chilton County is without authority to make a transfer of a tag from person to person where the transferee of the tag is not a resident of Chilton County where the tag was originally procured.

In connection with the foregoing your attention is invited to the following:

Opinions Attorney General 1924-1926, p. 35,
Opinions Attorney General 1928-1930, pp. 161, 463.

Which, while not directly in point, have a bearing upon the matter under consideration.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 24, 1931

Hon. J. B. Hard,
County Treasurer of School Funds,
Alexander City, Tallapoosa County, Ala.

County School Funds—Treasurer can pay out only on written order of County Superintendent of Education, approved by County Board of Education as evidenced by endorsement of Chairman of Board ordering payment.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of January 22, 1931, enclosing copy of order of the County Superintendent of Education directing you as said Treasurer to issue your warrant on a certain Erection, Repair and Equipment Fund, in favor of a certain person (Form No. 2 A. E. D.) The order does not bear the endorsement of the Chairman of the County Board of Education nor his order directing payment.

You request my opinion:

Is such order sufficient authority for me to issue warrant.

In answer will state that I know of no authority for your disbursing school funds except by payrolls prepared as prescribed by law, which payrolls must be prepared by the County Superintendent of Education (Sections 171, 172, 177 School Code), certified to by him and approved by the County Board of Education as indicated thereon by the endorsement of the Chairman of the Board ordering same to be paid. Section 94, 383, School Code).

The time, manner and method of preparing payrolls is directed by the County Board, subject to approval by the State Board of Education, Section 171, supra), but this does not mean that the items on the payroll must bear the approval of the State Board.

Forms of payrolls must strictly follow the law.

For the reasons stated I am of the opinion that you are not authorized to honor the order of the County Superintendent for warrant against a fund such as you mention unless and until the foregoing provisions of law have been strictly complied with.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 24, 1931

Hon. H. A. Baggett,
Tax Collector,
Monroeville, Monroe County, Ala.

Taxation—Personal Property not bid in for State.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of January 19, 1931. In it you state it is going to be necessary to advertise considerable personal property for sale this year for taxes for 1930; that in many instances there is no real estate involved; and that you are uncertain whether this property will sell under present conditions.

You request my opinion:

> Is the State responsible for personal property which fails to sell, in the same manner as real estate, and if not what can be done in such event.

In reply will state that there is no provision of law for personal property to be bid in for the State.

My suggestion would be to attach a nominal value to such personal property, and sell it for that or for the best price obtainable.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 24, 1931

Hon. Seth P. Storrs,
Commissioner, Agriculture and Industries,
Montgomery, Alabama.

Kerosene Oil Fund.—Funds derived from article of the Code placing inspection fee on kerosene oil are to be paid into the State Treasury to the credit of the Agricultural Department Fund.

Opinion by the Attorney General.

My Dear Sir:

This is to acknowledge receipt of your letter of February 12th in which you inquire whether or not funds derived from fees placed upon the

inspection of kerosene oil are to be paid into the State Treasury to the credit of the Agricultural Department Fund.

Section 175 of the Agricultural Code, 1927, provides that all monies received under the provisions of Article 19 shall accrue to the Agricultural Department Fund and be paid into the Treasury to the credit of said Fund, said Fund to be used in paying the expenses of testing and analyzing said oil and defraying the other expenses incident to the enforcing of the provisions of this Article.

I find no provision of law providing that you shall set up a Special Fund within a Special Fund. Obviously Section 175 referred to above provides the monies derived by the provisions of Article 19 shall be paid into a Special Fund in the State Treasury. The use to which this money may be put is provided in said Section. Particularly, in view of the fact that Section 484 of the Agricultural Code provides that all funds available from every source for the purpose of enforcing or making effective the purposes or provisions of the law, are such Funds included in the Agricultural Fund. Also the term "Agricultural Department Fund" shall mean Agricultural Fund wherever used in the Agricultural Code. It will be noted that in Section 175 of the Code you are required not only to use all monies received under Article 19 of the Code in paying the expenses of testing and analyzing oils but you must also use these monies in defraying other expenses incident to the enforcing of the provisions of Article 19.

In view of the fact that the law so plainly provides that these monies shall become a part of the Special Agricultural Department Fund of the State Treasury and in view of the fact that the monies may be used for defraying expenses incident to the enforcement of Article 19, I cannot see why you should be required to set up a Special Fund within a special Fund when in the authorized use of such fund you are unable to distinguish just what are the incidental uses to which such funds must be put.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 26, 1931

Hon. D. B. Borden,
Judge of Probate,
Greensboro, Hale County, Ala.

Commissioners' Court may make appropriation to help pay expense of drought loan work.

Crop mortgages made to United States not subject to registry tax.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you ask me to advise you:

(1) Whether or not the Commissioners' Court has authority to make an appropriation to help pay for the expenses of the drought loans in this county.

(2) Whether a mortgage on a crop given to the United States Government is subject to mortgage tax.

Subsection 23 of Section 6755 of the Code of 1923 provides:

"23. To set aside, appropriate and use county funds or revenue for the purpose of developing, advertising, and promoting the agricultural, mineral, timber, water labor, and all other resources of every kind of their respective counties, and for the purpose of locating and promoting agricultural, industrial, and manufacturing plants, factories and other industries in their respective counties."

You will observe that this authorizes an appropriation for the "purpose of developing * * * and promoting the agricultural * * * resources of their respective counties." This authority is broad enough I think to authorize an appropriation to help pay the expenses incident to making of loans for drought relief. Such a purpose is clearly to develop and promote the agricultural resources of the counties. I, therefore, answer your first question in the affirmative.

My answer to your second question is in the negative. The mortgage form attached to your letter is made to the United States of America, and is not subject to the Alabama tax for registration of mortgages.
Crossland v. Federal Land Bank, 261 U. S. 374.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 26, 1931

Hon. John S. Mooring,
State Tax Commissioner,
CAPITOL.

Taxation—exemption—property of World War Veterans, real or personal held by guardians of such veterans, who are wards of the Government, exempt from taxation by the State, where such property is derived from funds received under Section 454 and Section 506, Code of the United States, Vol. 38.

Opinion by the Attorney General.

Dear Sir:

I am today in receipt of your letter of February 25th in which you inquire whether the funds or estates, whether existing as real or personal property, whether invested, loaned or held in cash by the guardians of disabled war veterans, are exempt from taxation by the State of Alabama, where such property or funds were derived as benefits under the two Acts of Congress known as the World War Veterans Act of 1924 and the World War Adjusted Compensation Act. You call my attention to a former opinion of the office of June 10, 1929. This opinion holds that such property is exempt from taxation and cites as authority for such exemption certain Acts of Congress, viz:

38 U. S. C. Section 454,
38 U. S. C. Section 618.

With the conclusion reached in this opinion, I am in agreement. With the reasoning, I am not in agreement. I do not think that the Federal statutes in any wise make more absolute the exemption of this property from state taxation. I cannot commit myself to the proposition that Congress might pass a law indiscriminately exempting property from taxation by the State. I have grave doubt of the constitutionality of any such Act.

It is not necessary to consider the before mentioned Sections of the Federal Code to arrive at the conclusion that this property is exempt from taxation. Obviously, in taking care of its disabled World War Veterans, Congress was in the performance of a constitutional governmental function, which in no sense of the word, partakes of the nature of a private enterprise.

The guardians appointed for these wards of the government become the agents of the Government in the performance of this function. The funds placed in the hands of the guardians are the instrumentalities by which the Government effectuates the constitutional purpose.

A tax upon these funds is a direct hindrance to the agents of the Government in the performance of their duties. A tax upon an investment made by such guardians is likewise a tax upon the instrumentality by which the Government is caring for its veterans.

It has been held that a tax on real estate is indisputably a direct tax. It has also been held that a tax on rent or income acquired from real estate is equally a direct tax. It has also been held that a tax on personal property or the income derived from real estate is also a direct tax.

Pollock v. Farmers Loan & Trust Co. 151 U. S. p. 637.

We find ourselves then in the position of attempting to levy a direct tax upon an instrumentality of the Federal Government. I am unable to

distinguish the position of a disabled War Veteran who is a ward of the Government from that of the Greek and Osage Indians to whom the United States owed certain duties under its treaty and who are regarded as its wards. The Supreme Court of the United States has numerous times held that the property of its wards in the hands of the Government could not be taxed.

In Choctaw, Oklahoma & Gulf R. R. Co. v. Harrison, 235 U. S. 292, it was held that a lessee could not be taxes on gross sales of coal from Choctaw and Chickasaw mines. The same Court took the position that a lessee could not be taxed upon the value of an Osage oil lease.

Indian Territory Illuminating Oil Co. v. Oklahoma, 240 U. S. 522.

The tax upon the investments in the instant case would be a tax upon the power to make such investments; a tax upon the efforts of the Federal Government to care for its disabled veterans and such tax could be used to destroy the power to provide for these wards of the Government. 240 U. S. p. 522, supra; unless perchance, the Supreme Court of the United States still adheres to the theory announced in the case of Panhandle Oil Company v. Knox, to the effect that the power to tax is not the power to destroy so long as the Supreme Court sits.

Where investment by guardians are made, **from funds derived from the Federal Government as a benefit to the ward,** such monies being immune from interference, the tax on such investments is pro tanto void.

Pollock v. Farmers Loan & Trust Co. 157 U. S. 429, 158 U. S. 601.

I am of the opinion that the same considerations which invalidates a tax upon leases made by Government in promoting the welfare of its Indian wards, indicate that a tax upon investments made by guardians, whether in real estate or personal property, is a direct hamper upon the efforts of the United States to take the proper care of its wards.

Pollock v. Farms Loan & Trust Co. supra,
Gillespie v. The State of Oklahoma, 257 U. S. p. 501.

In view of the decision referred to herein, I am of the opinion that the reasoning advanced in the former opinion of the office for this exemption was unnecessary, if not unsound. However, the conclusion reached in the former opinion is correct and the cases cited herein appear to be conclusive on the subject.

The exemption in the instant case springs from an implied immunity under the Constitution of the United States and not from the Acts of Congress.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 26, 1931

Hon. W. L. Pratt,
Judge of Probate, Bibb County,
Centerville, Alabama.

Small pool tables known as baby pool required to pay license required of pool tables.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of February 21, 1931, in which you state:

"We have several small pool tables known as 'Baby Pool' in this County. They are made and played like an ordinary pool table of standard size but judging from their appearance they are about 2x4 feet. So far as I know, or can learn, they are played as all pool tables are."

You ask me to advise you if there is any license on this kind of a pool table?

Replying, I beg to advise that Section 1 of an Act approved September 5, 1923, Acts 1923, page 224, defines pool tables as follows:

"The term billiards, as used in this act, shall mean any of the several games played on a table surrounded by an elastic ledge of cushions, with balls which are impelled by a cue, and shall include all forms of the game known as carom billiards, pocket billiards, formerly known as pool, and English billiards."

Under this definition, the game as described by you, in my opinion would be subject to the license required by Schedule 86, Section 361, Acts 1919, page 282, known as the license for pool tables.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 27, 1931

Hon. G. H. Howard,
Judge of Probate,
Wetumpka, Elmore County, Ala.

Clerk of Circuit Court may act as Clerk of Jury Commission under Section 8587, Code of 1923. He may also be appointed Clerk of the Jury Board under an Act approved February 20, 1931.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of February 24, 1931, in which you make the following inquiry:

> Can I pay the Clerk of the Circuit Court for services rendered as Clerk of the Jury Commission?

My answer to your inquiry is in the affirmative. Section 8587, Code of Alabama, 1923, makes the Clerk of the Circuit Court eligible to appointment as Clerk of the Jury Commission in all counties that have seventy-five thousand or less population according to the last Federal Census. Of course under this Section the County must have had this population preceding the employment of such Clerk, and his compensation is $5.00 per day while actually engaged in the performance of his duties, to be paid out of the County Treasury upon the order of the President of the Commission. Of course this law has now been abolished and a new Board created known as the Jury Board. The Act abolishing the Jury Commission was approved February 14, 1931, and of course under this law the Clerk would have had to perform the services for which he now seeks pay prior to the approval of this Act. Under an Act of the Legislature approved February 20, 1931, Section 8 which is almost a verbatim copy of Section 8587, supra, under this Act and the Section above referred to, the Clerk of the Circuit Court in counties of seventy-five thousand and less may be appointed Clerk of the Jury Board and his compensation is $5.00 per day while actually engaged in the performance of his duties. This also is paid upon the approval of the President of the Board.

Under both laws the Jury Commission or the Jury Board may appoint such Clerk if they see fit. The two laws only make him eligible, but if the Jury Board sees proper they may appoint some other person than the Clerk of the Circuit Court.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 27, 1931

Hon. L. B. Clark,
Clerk of Circuit Court,
Enterprise, Coffee County, Ala.

Trial tax chargeable in garnishment proceedings.

Opinion by Assistant Attorney General Moore.

Dear Sir:

You state that you have about twenty-five garnishment cases on your docket which are now pending settlement but are being held up on account of the trial tax. You refer to Biennial Report of Attorney General 1920-22, p. 496 and Biennial Report of Attorney General 1918-20, p. 338, in which it was decided that the trial tax provided for by Section 4½, Acts 1919, p. 282 is not chargeable in garnishment cases and you also refer to opinion in Biennial Report of Attorney General 1926-28, p. 169 holding that the trial tax provided for by the said Section 4½ is chargeable in garnishment cases.

In view of the confusion which seems to have arisen of these various opinions it seems advisable to discuss the matter of a garnishment in Alabama in an effort to determine whether such a proceeding is "a case" within the meaning of said Section 4½.

Section 4½ is as follows:

> "Trial Tax.—That a trial tax of three dollars be, and the same hereby is imposed **in each case** civil, criminal and equity, which hereafter **goes upon the docket** of any circuit in this State, to be taxed and collected as other costs, and when collected, to be paid by the clerk of such court, into the general funds of the State Treasury."

Under this language every case which goes on the docket is subject to the trial tax of three dollars as provided therein. The natural questions then, to be determined is the meaning of the word "case," and is a garnishment proceeding, embraced within the meaning of the word "case."

> "Garnishment closely approximates an action by the plaintiff against the garnishee, and in some jurisdictions it is held to be such, especially where the purpose is to reach choses in action. It is an **adversary** proceeding between the plaintiff and garnishee or at least may develop into such; it is commenced by a writ or summons, terminates in a judgment and is largely governed by the rules applicable to actions generally, including those concerning jurisdiction, parties and procedure in the cause."
>
> 28 C. J. 17.

> "A garnishment, as it has often been defined and described in the course of judicial decision, is "the institution of a suit by a creditor against the debtor of his debtor, and is governed by the general rules applicable to other suits adapted to the relative situation of the parties."—1 Brick. Dig. 173. Section 276. Such being the nature and character of the proceeding, it follows necessarily that the judgment rendered, as between the parties, the plaintiff instituting it, and the garnishee standing in the relation of a defendant, has all the properties and qualities of finality and conclusiveness of a judgment

rendered in any other civil suit. A judgment against the garnishee in favor of the plaintiff, as finally and conclusively fixes and determines the liability of the garnishee and the rights of the plaintiff, as if it had been rendered in a suit inter partes commenced in the ordinary mode of instituting civil suits; and such is in effect the declaration of the statute."

Steiner Bros. v. First National Bank of Birmingham, 115 Ala. 384.

Roman vs. Montgomery Iron Works 156 Ala. 604.

In Dishman, et al vs. Griffis, et al., the subject of garnishment was discussed at length and the court declared that "garnishment is a suit by a creditor against the debtor of his debtor."

A garnishment while an auxiliary and ancillary proceeding in aid of the main suit has most of the characteristics of an original proceeding. The same requirement as to parties, jurisdiction, trial and judgment apply and the right of an appeal exists to either party. The only restriction or exception to differentiate a garnishment from an original proceeding is that it must be in aid of a suit pending or to secure collection of judgment previously rendered. It is in essence a suit and while it is an auxiliary suit in aid of another proceeding yet between the plaintiff and the garnishee all the rights belonging to the parties in an original proceeding apply. It is a suit by the plaintiff against the garnishee to obtain property in a garnishee's possession.

Is such a suit a "case" within the meaning of Section 4½, supra? It is my judgment that it is such a case and that the trial tax is chargeable as provided in said Section.

The opinion rendered under date of September 8, 1922, see Biennial Report 1920-22, p. 496, and opinion rendered under date November 7, 1919, see Biennial Report 1918-20, therefore are overruled, and the opinion rendered April 23, 1927, see Biennial Report 1926-28, is approved.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 27, 1931

Hon. J. M. Money,
Judge of Probate,
Scottsboro, Jackson County, Ala.

Commissioners Court—power to make appropriation.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of February 11, 1931, in which you state that the Commissioners Court of your County has appropriated $100 as an emergency fund to help feed the people of your County, who are destitute.

You request my opinion:

Please let me know at once how I can pay this out?

Answering your request permit me to say I am unable to find any authority for the Commissioners Court of your County making such an appropriation. The Court of County Commissioners is purely a creature of the statute having no constitutional or inherit power. It derives all of its authority by statutory enactment. Whenever this court performs any act it must be able to point to some statute which directly authorizes it.

117 Ala. 203
70 Ala. 145.

Therefore, I am of opinion that should this money be paid out under an appropriation of this character the Examiner of Public Accounts checking your records along with the record of the Commissioners Court would be authorized to charge the same back to you. The Probate Judge in drawing his warrant to pay a claim allowed by the Commissioners Court would be himself liable for drawing the warrant to pay any claim which is not authorized by law, likewise the Treasurer of the County or the County Depository or any other agency of the County having charge of payment of such claim would also be liable for paying it.

Biennial Report of Attorney General, 1926-28, p. 127.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 28, 1931

Hon. W. R. Jordan,
Tax Assessor, Covington County,
Andalusia, Alabama.

Lumber held at different place from place of manufacture not exempt from taxation.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of January 8, 1931, in which you state that the W. F. Bradley Lumber Company of Montgomery has a concentration yard at

Andalusia, Alabama, and also one at Opp, and that they claim that the lumber is exempt from taxation on the ground that it is in the process of manufacture. You state that it is your information that some of this lumber is bought outright from different small mills while green and some of it is cut by contract, and that some of the lumber at Opp, Alabama, was cut by a mill owned by the W. F. Bradley Lumber Company. A part of this lumber at Opp was not moved from where it was manufactured. That all of the lumber at Andalusia was manufactured into wood by small saw mills and hauled while green to the concentration yard at Andalusia and held there until dry enough to ship.

You wish to know if this lumber is taxable.

Subsection J of Section 3022 of the Code of 1923, provides:

> "All manufactured articles, including pig iron, in the hands of the producer or manufacturer thereof, and **at the place of production or manufacture,** shall be exempt from taxation for twelve months after its production or manufacture."

Exemption statutes must be strictly construed. Therefore the lumber at Andalusia which you state was manufactured elsewhere and moved there is not exempt from assessment and taxation. Neither is any of the lumber at Opp which was manufactured elsewhere. That portion which was manufactured at Opp and not moved from the place of manufacture is exempt from taxation at the place of manufacture for twelve months after its production or manufacture.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 2, 1931

State Tax Commission,
CAPITOL.

Attention: Mr. S. C. Crockett.

Guns, rifles, etc., person liable under Schedule 83, Section 361, Acts 1919 p. 282, for dealing in any of the articles enumerated.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"Your opinion is requested as to liability for license under sched-

ule 83, Section 361, page 282, Acts 1919, (Schedule 80, Revenue Laws of Alabama, 1929), in instances illustrated as follows:

"(a) If such person sells only either one of the following class of articles, 'shot guns', 'rifles', 'noiseless rifles', 'air rifles', 'metallic ammunition'.

"(b) If such person sold only 'shot guns', or 'rifles', or 'noiseless rifles', or 'air rifles', and 'metallic ammunition'."

These questions are substantially the same and the opinion herewith given will answer both questions.

In my opinion such person is liable for a license provided in said Schedule, if he is a dealer in any one of the articles therein enumerated whether he deals in the other article or not.

The language of this Section permits no other construction in my opinion. It says, "each person * * * dealing in shot guns or air rifles and metallic ammunition, **whether principal stock in trade or not.**" The disjunctive, "or" clearly applies to all the named articles except metallic ammunition, and in my judgment the use of the word "and" in that connection is not a limitation, but merely an addition to the classes taxed. Metallic ammunition is defined in Webster's Unabridged Dictionary as "fixed ammunition for small arms, rapid fire guns, machine guns, etc., with metallic cartridge case, usually of copper or brass." Your attention is invited to an opinion to be found in the Biennial Report of the Attorney General 1928-30 page 781 holding that shot gun shells having a container made partly of paper and partly of copper is not metallic ammunition. This opinion is not in conflict with the ruling herein made. "Metallic ammunition" has a definite meaning, and the opinion above referred to eliminates from such meaning shot gun shells whose containers are partly of paper. It therefore, appears to me that the words "metallic ammunition" had a definite meaning in the legislative mind and that the use of the word "and" was not by way of limitation but by way of addition.

Hence it follows that a person dealing in shot guns, rifles, noiseless rifles, air rifles, metallic ammunition, either or all of them is liable for the license required by said Schedule 83.

The foregoing opinion is not in conflict with the opinion of March 25, 1925, Biennial Report of Attorney General, 1924-26 to which you refer. The license schedule there ruled on provides a license on a "news-stand" and in my judgment the reference to "newspapers, magazines and periodicals" is definitive of the word "news stand."

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 2, 1931

Hon. Roy Sanderson,
Circuit Clerk,
Hamilton, Marion County, Ala.

Fees—Witness in more than one criminal case.

License Inspector—Fees for arrest and taking and approving bond.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of February 23, 1931. In it you state that at the holding of County Court recently in your county a State witness claims per diem for attendance in ten cases, he contending that he was held over for the different cases. Witness lives in Hamilton, and did not claim for mileage.

You request my opinion:

1st. In what manner must such witness make election as to which case or cases he claims his mileage and per diem?

2nd. Must a witness procure his certificate of attendance from the clerk immediately on the disposition of one case before he can claim in the subsequent case or cases?

3rd. Where a License Inspector makes an arrest for a violation of the license law, is he entitled to the fees for the arrest and taking bond?

In answer to your first question I refer you to Section 3770, Code of Alabama, 1923, which is as follows:

"A witness for the State, attending in more criminal cases than one at the **same time,** shall only be entitled to fees in **one** case, **to be selected by him while so attending; but if after the case in which he elects to claim his fees is disposed of,** his attendance is required in the other case or cases, he shall, **for such attendance,** be entitled to claim his **per diem in such other case,** or **if more than one, in the one** in which he may **then** elect to claim his fees; and so on until all the cases in which he is required to attend are disposed of by **trial, continuance,** or otherwise."

I presume from your inquiry that you have in mind the foregoing law.

This section requires a selection before the disposition of the first case for which he has been summoned. If he selects the **first** case as the one in which to claim his per diem and mileage, then after that case has

been disposed of, and not until then, if he is detained as a witness in any of the remaining cases, it immediately becomes his duty to elect in which case to claim per diem, and upon the disposition of such case, if he is still detained as a witness, he pursues the same procedure, "and so on until all the cases in which he is required to attend are disposed of * * *."

> "If the case in which the witness elects to claim his fees is not disposed of prior to the other cases, then he would not be entitled to claim fees in the other cases, for the reason that he was not detained or required to attend the other cases. The same reasoning may be applied where there are more than two cases."
>
> Opinions Attorney General 1926-1928, p. 60.

And in the instant case if witness fails to make an election after the disposition of the first case in which he claims his fees, he is not entitled to per diem except in that one case.

> Opinion Attorney General 1926-1928, p. 60.
>
> To like effect see Opinions Attorney General 1926-1928, p. 306.

Witness fees should not be charged against a defendant in a criminal cause unless attendance has been proved.

The section by the witness under Sestion 3770 should be communicated by him to the Clerk of the Court at the time required by law.

In answer to your second question I am of the opinion that under Section 3770, where witness is summoned in two or more cases and is detained for more than one, he should prove his attendance in the first case of his selection **on the disposition of that case** "by trial, continuance or otherwise," and certainly, if disposition is by **trial, then before** judgment for costs is rendered by way of sentence against the defendant.

> Opinions Attorney General 1928-1930, p. 401.

Answering your third question, I invite your attention to Section 72, Act approved July 22, 1927 (Acts 1927, p. 183, 185) the pertinent part of which is as follows:

> "License inspectors shall have the same power **to arrest** persons violating the revenue laws of the State as is now vested in the sheriffs of the State, **and shall receive the same fees for such** service."

The fees of a sheriff for making arrests are set out in Section 3741, Code of Alabama, 1923.

> See also Opinions Attorney General 1928-1930, p. 33.

This office has held that under the statute above quoted, when read in connection with Section 3363, Code of Alabama, 1923, the license inspector arresting a person for violating the revenue laws may take and approve bond.

Opinion Attorney General 1928-1930, p. 530.

I am of the opinion, therefore, that since the giving of bail is mandatory under Section 3363 where there has been an arrest for a misdemeanor, and since the inspector is empowered to make such arrests and is entitled to the same fees as a sheriff for making arrests under the revenue laws, then the inspector taking and approving bond in such instance is entitled to the fee of a sheriff therefor.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 2, 1931

Hon. John S. Mooring,
State Tax Commissioner,
CAPITOL.

License Inspectors—Fees of old and newly appointed license inspector.

Opinion by the Attorney General.

Dear Sir:

This is to acknowledge the receipt of your letter of recent date.

You state that a situation has arisen in Jefferson County where there is some question as to who is entitled to the fees growing out of the collection of delinquent licenses. You state that, under the new administration, a new license inspector has been appointed.

You inquire of me as to which of the license inspectors, the outgoing or the incoming, are entitled to fees in certain instances.

Answering your first inquiry, I am of the opinion that in cases where the payment of the license is made on a citation of the outgoing license inspector without any work or effort on the part of the incoming license inspector, the outgoing inspector, who issued the citation, is entitled to the fees provided by the act.

Answering your second inquiry, in cases where no new citation is issued by the incoming inspector, but such payment is due to some informal

work of the new inspector and the money is paid into the Probate Court, I am of the opinion that the old inspector is entitled to the fees. The Act clearly contemplates that the fees of the license inspector shall be contingent upon an issuance of the citation. This is a step which must be taken prior to the payment into the Probate Court of the license which is due in order to entitle the license inspector to any fees in the matter.

Answering your third question, where no attention is paid to the citation issued by the outgoing license inspector, and the incoming inspector issues new citation and does all of the work necessary to secure the payment of the delinquent license, the new inspector is entitled to the fees provided by the Act.

I am also of the opinion that where no attention is paid to the citation issued by the old inspector, and the new inspector brings a criminal prosecution as provided, he is entitled to the penalties imposed for his benefit. The bringing of the criminal proceedings is an alternative step in the procedure of collecting the license.

Where a criminal proceeding is brought and the fees for services of the license inspectors are taxed against the delinquent, I am of the opinion that the old inspector is entitled to the fee provided by the Act in question for the service performed by him in issuing the citation. In view of the fact that the Act provides that for each citation served by the license inspector, he is entitled to a fee of $1.50 to be taxed against the delinquent, the Act also provides that from the penalties collected, the license inspector shall be paid all fees due him for services as provided in this Act.

General Acts, 1927, p. 182, Sec. 72.

I hope the above expression will furnish you the desired information.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 5, 1931

Hon. Wm. W. Brandon,
Judge of Probate, Tuscaloosa County,
Tuscaloosa, Alabama.

Laundry doing cleaning and pressing liable for pressing club license.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of February 26, 1931, in which you state:

"The Crystal Laundry of Tuscaloosa, Alabama, which operates a Steam Laundry applied for a license to do business and were issued a license under Schedule 98 of the 1929 Revenue Code which license was $38.00 in the City of Tuscaloosa.

"The Crystal Laundry's chief business is doing general laundry work. However, they do send out and solicit dry cleaning and pressing which is done in the same place where their laundry business is carried on. The question is, should the Crystal Laundry pay a Pressing Shop license as levied under Schedule 147 of the 1929 Revenue Code in addition to their general laundry license?"

In my opinion such laundry is liable for additional license for operating a pressing club as required by Schedule 120, Acts 1919, page 282, Section 361.

This Section provides that "each person, firm or corporation conducting what is commonly known as a cleaning or pressing business, or pressing club, where wearing apparel is cleaned, pressed or dyed, shall pay license," etc. I think this section clearly contemplates a license for services different from that denoted by the word "laundry."

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 7, 1931

The State Tax Commission,
State Capitol,
Montgomery, Alabama.

Attention: Mr. S. C. Crockett:

Ladies serving meals to organizations without individual profit and not serving the public generally not liable for restaurant license. Schedule 92, Section 361, Acts 1919, p. 282, discussed.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"In order that this office may issue definite instructions to the various License Inspectors, your opinion is requested as to whether or not liability for license under Schedule 154 of the Revenue Laws of 1929, exists in instances such as are illustrated in either or both of the following:

(a) A certain group of ladies, say, of a certain church or organization, occasionally serve meals, such as special chicken or turkey dinners, sometimes, say, in the basement of the church itself, or some vacant store, or other public building, or place. These ladies are not engaged in the business of operating a restaurant, but they make no discrimination in their service to the general public when they do serve these occasional meals, which sometimes may be only every two or three weeks, and again, they may be served daily for the period of a week or more, such as when court is in session, etc. The profits derived from the sale of these meals are donated to charity or put into the treasury of the religious, fraternal, etc., organization.

(b) The same group of ladies mentioned in (a) serve meals regularly, say, every other Friday night each month, or every Thursday noon of each week, etc., not to the general public, but to the members of such organizations as the Lions, Rotary and Exchange Clubs, the Chamber of Commerce, etc. As in (a), these meals may not all be served in the same place, and in this instance, too disposition of the profits are made as in (a).

Answering your first question, which is of a hypothetical nature, I beg to advise as follows:

The language of the statute indicates that the business licensed is of a public nature and in order for a business to be liable therefor there must be a present doing of business regularly and holding out the service to the public in general. An occasional service to the public would not, in my opinion, make the party liable for the license. The acts must be of such a nature as to evidence a purpose to engage in a regular or permanent occupation. While the purpose for which such act or acts are performed is not the sole criterion in determining whether or not their performance renders the person performing them liable for the license, yet the usual and customary object for conducting or operating any sort of business, is the hope of personal profit or gain and in passing on a particular set of facts, the fact that the purpose is non pecuniary to any individual but wholly fraternal, religious or charitable, is to be considered in deciding whether the person or persons are liable for the license. Roughly, I should say in passing on facts such as you suggest, the following things should be considered:

1. The purpose motivating the acts done.

2. To whom the proceeds or profits, if any, are to be paid.

3. Whether the food and supplies are purchased or contributed.

4. Whether any person or persons are paid a salary or wages for performing or assisting in the performance of such acts.

5. The nature and manner in which said act or acts are done.

6. Whether such act or acts are continuous.

7. If not continuous, the regularity with which they take place.

8. Whether the persons serve the public generally or only a limited class.

9. Whether such persons have a fixed place of business or stand.

10. In general, whether the entire facts and circumstances taken together evidence a doing of business.

With the foregoing as a guide, your license inspector or the Tax Commission should be able to decide each case as it arises.

My answer to your second question is in the negative. The classes suggested are limited. There is no fixed place of business. The public generally is not served. There is no continuous business and no individual profit results therefrom.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 9, 1931

Hon. W. F. Feagin, Director,
Board of Administration,
CAPITOL.

Purchases by Board of Administration; emergency purchases without advertising and bidding; purchases requiring advertising and bidding.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I acknowledge receipt of your letter of February 14th. You enclose contract entered into by Hon. C. A. Moffett, former president of the State Board of Administration, and the Alabama Fruit & Produce Company, in words and figures as follows:

"STATE OF ALABAMA)
MONTGOMERY COUNTY)

THIS CONTRACT and agreement entered into on the day and date hereinafter written by and between the State Board of Administration for and on behalf of the State of Alabama, with the consent and approval of the Governor hereon expressed, and T. B. Daves, doing business as Alabama Fruit and Produce Company, located at Mobile, Alabama.

WITNESSETH:

The said T. B Daves, doing business as Alabama Fruit and Produce Company agrees to market and sell all of the fruit and vegetables raised on the State Prison Farm known as the Moffett State Farm and located in Escambia County, Alabama, at the highest market price obtainable; to furnish proper grading equipment for properly grading the Irish Potatoes. The said Produce Company agrees to have one or more representatives on the said Moffett Farm property at all times during the market season of the particular fruit or vegetable to be marketed at that time; said representatives to work in conjunction with the Warden of said Moffett State Farm to obtain the highest possible results and to supervise the inspection, packing and loading of said fruit and/or vegetables; the selection of the products to be planted and the acreage of same to be decided upon from time to time between the State and the Produce Company, but the Produce Company shall have the right to decide as to the seed to be planted on the particular acreage decided upon, and the selection of the shipping containers for the fruit and/or vegetable so shipped.

"The State of Alabama agrees to sell the said Alabama Produce Company for sale and marketing all the fruit and/or vegetables raised by the State for the market; but the State reserves the right to take such fruit and/or vegetables as may be required for the State's use at any of its convict camps or penitentiaries, and reserves the right to use such fruit and/or vegetables as may be required for the operation of its packing plant.

The State of Alabama agrees to pay to the said Produce Company the following percentages of the net price obtained by the Produce Company on the sale of the vegetables and/or fruits sold by the Produce Company, to wit:
On potatoes and cucumbers 15% of the net price obtained.
On strawberries 7½% of the net price obtained.
On all other products 10% of the net price obtained.

The said Alabama Fruit and Produce Company agrees to guarantee collection of all sales made by them of produce, fruits, and/or vegetables raised on said Moffett Farm and sold by them.

The said Produce Company will at its own expense furnish a Government Inspector to supervise the inspection of the quality, grading and packing of the strawberries raised on said farm and sold by the said Alabama Fruit and Produce Company for the State of Alabama.

This contract is to remain in force for a period of three years from the date hereof, but it is expressly stipulated and agreed that if the contract is not satisfactory to either party, or if the conditions of the contract are not fulfilled and not satisfactory, and adjustment of the disputed questions cannot be reached between both parties hereto, then this contract may be canceled by either party giving thirty days notice.

IN WITNESS WHEREOF the name of the State of Alabama is hereto attached by the President of the State Board of Administration and the Alabama Fruit and Produce Company, by T. B. Daves, doing business as said Alabama Fruit and Produce Company; and approved by the Governor of the State of Alabama on this the 2 day of December, 1929.

STATE OF ALABAMA

By C. A. MOFFETT
President of the State Board of Administration of the State of Alabama.

T. B. DAVES
Doing business as Alabama Fruit and Produce Company.

APPROVED:

BIBB GRAVES
Governor of Alabama."

In your letter you state that 7800 bushels of seed Irish Potatoes were purchased under the said contract, the purchase having been made from the Alabama Fruit and Produce Company and the purchase having been made without advertising and bidding. You state further that the 7800 bushels of seed Irish Potatoes have been received at the Moffett State Farm and have been planted. You state further that the sworn account for $17,472.00 has been presented to your Department.

You desire to know:

1. Whether the purchase was made as required by law?

2. If the purchase was not made as required by law, what disposition should you make of the sworn account for $17,472.00?

3. Whether under the contract the State was or will be obligated to purchase seed selected by the Alabama Fruit and Produce Company?

An examination of the contract reveals that the State was not and will not be obligated to purchase the required seed from the Alabama Fruit and Produce Company. The State **may** purchase the required seed from the Alabama Fruit and Produce Company, provided such purchase is made in accordance with the law in such cases made and provided, but under no fair construction of the contract, can it be said that the State was or will be obligated to purchase the seed from the Alabama Fruit and Produce Company, and from none other. Even though the contract should so provide, the State could not lawfully make such a purchase from the Alabama Fruit and Produce Company, or from any other source, unless such purchase is made as provided by law. In other words, purchases of this kind must be made in the way provided by the statutes. It is true that certain purchases may be made without advertising and bidding as provided by Section 39, p. 502, of the Code of 1923. The purchase of 7800 bushels of seed potatoes, delivered under what purports to be a contract entered into more than ten months before the potatoes were delivered, cannot, in any sense be termed an emergency purchase, as contemplated by Section 39, which Section provides:

"39. Contracts and purchases by board; how made.—All contracts of the board shall be in writing, signed for the board by the president. The board, with the approval of the Governor, may prescribe rules and regulations for emergency purchases without advertisement for bids."

Regardless of the provisions of the contract, if the purchase in question was not authorized under Section 39, then it becomes necessary to comply with Section 42. I am constrained to hold that the purchase was not autorized under Section 39, regardless of the provisions of the contract. If there are other facts which brand the purchase in question an emergency purchase as contemplated by Section 39, the facts are not before me. Based upon the facts disclosed by the file submitted to this Department by your Department, I cannot hold that the purchase was authorized by Section 39.

Section 42 provides:

"42. Supplies for state departments and institutions; how obtained.—The board of administration shall purchase all supplies for all departments and activities of the state, except educational, charitable and eleemosynary institutions governed by their own board of trustees and managers, under rules and regulations which the board may adopt, with the approval of the governor, and which rules, among other things, shall require advertisements for written bids and allow opportunity for competition among bidders, and the award of contracts to the lowest responsible bidder, and shall prescribe requirements to be observed by successful bidders to secure compliance with their bids,

and may require bidders to give bond, with duly authorized surety companies as surety to secure performance of contracts under regulations which the board, with the approval of the governor, may prescribe."

It is admitted that the provisions of Section 42 have not been compiled with, since there was no advertising and no bidding.

Even though the purchase was not made in accordance with the law in such cases made and provided, the State has received and has used the property of the Alabama Fruit and Produce Company, and the facts do not prevent the raising of an implied promise on the part of the State to pay the Alabama Fruit and Produce Company the fair market price of the seed potatoes in question at the Moffett Farm on the date or dates the potatoes were delivered. This doctrine of implied liability applies to cases where money or property of a party is received under such circumstances that the general law, independent of express contract, imposes the obligation upon the State to do justice with respect to the same. If the State obtains money or property of another, by mistake, or without authority of law, it is her duty to refund it, not from any contract entered into by her on the subject, but from the general obligation to do justice, which binds all persons, whether natural or artificial. If the State has received property which does not belong to her, it is her duty to restore it, or, if used by her, to render an equivalent to the true owner from the like obligation; the law, which always intends justice, implies a promise.

Allen v. Intendant & Councilmen of LaFayette, 89 Ala. 641.

Greeson Mfg. Co. v. County Board of Education, 217 Ala. 565.

Town of Clayton v. Chilton County, 87 So. p. 345.

General Electric Co. v. Town of Fort Deposit, 174, Ala. F. 279.

Montgomery County v. Pruett, 172 Ala. p. 391.

Bluthenthal & Bickers v. Town of Headland, 132 Ala. 249.

9 L. R. A. p. 497,
58 L. R. A. p. 100,
58 L. R. A. p. 103,
129 Ga. p. 806,
28 Cyc. p. 1537,
28 Cyc. p. 1552,
28 Cyc. p. 1553.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 11, 1931

Hon. Carl M. Glass,
Tax Collector, Pickens County,
Carrollton, Alabama.

Taxation—Assessor's duties.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of February 12, 1931. In it you request my opinion:

1. When a taxpayer fails to make a return of his taxable property before the first Monday in February, and the Tax Assessor, **without having made verbal or written demand on the taxpayer,** adds a penalty of ten per cent to an information assessment made by copying the last year assessment and signing the taxpayer's name thereto, can I legally enforce said assessment?

2. If the taxpayer offers me the amount of his taxes made on assessment, as above, without the penalty, of the taxes computed on the amount of the penalty, should I accept the amount and ask the Commissioners Court to allow to me as an error the amount of the taxes computed on the ten per cent penalty?

3. If after the 31st day of December, of each year, the Tax Assessor fails to make a verbal or written demand on the taxpayer for a return of his property subject to taxation, and then makes an assessment by copying the last year's assessment and adding the penalty of ten per cent, can I **legally** enforce the collection of the taxes against the taxpayers property?

In answer to your first question, will state that I am of the opinion the tax assessor must first make verbal or written demand as required by law before adding the penalty, and I am of the further opinion that, unless the requirements of the law are met by the tax assessor by giving proper notice, the assessment cannot be legally enforced.

However, you, as Tax Collector must be governed by the abstract furnished by the Tax Assessor and until the Tax Assessor certifies that he has made an error you have no authority to assume that he failed to give the proper notice.

If a taxpayer wishes to contend that he was not furnished with proper notice, he must take steps provided by law in resisting the payment of taxes.

124 Ala. 145.

The answer to your second question is in the negative. See answer to your first question.

The answer to your third question is in the negative, but this information must come from the Assessor to you and not from the taxpayer.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 11, 1931

Hon. D. W. Crosland,
Judge of Probate,
Montgomery, Alabama.

Miniature tables commonly called miniature pool tables having nickel-in-the-slot device liable under Schedule 73, Section 361, Acts, 1919, page 282.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of March 8th in which you state:

"We have had application made to us for a license to operate a miniature pool table which is operated by a nickel-in-the-slot device. These tables are about 24x48 inches and are very small and before they can be operated, a coin must be placed in the slot."

You ask:

"Will you please inform us whether this should be charged a Slot Machine License or a regular Pool Table License?"

Answering your question I advise that it is my judgment that where tables of this nature are operated with a slot machine device they should be subject to the slot machine license. This on the well known principle of law that taxing statutes are to be strictly construed and where there is doubt the same should be resolved in favor of the taxpayer.

This opinion is not in conflict with opinion rendered February 26, 1931, to Hon. W. L. Pratt, Probate Judge of Bibb County. That opinion was rendered on the particular facts given.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 11, 1931.

Hon. John Gamble,
Judge of Probtae, Pike County,
Troy, Alabama.

Probate Judge: Liable on official bond for illegal warrant on depository.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of March 4th in which you state:

"Please refer to your ruling of February 25, 1931, directed to Hon. E. J. Garrison, Judge of Probate of Clay County, with regard to the employment of relatives of the members of the several Courts of County Commissioners or Boards of Revenue.

"I will thank you to render me your official opinion as to the liability, if any, of the Judge of Probate in issuing a warrant in payment of a claim of a person employed by the Court of County Commissioners contrary to your opinion addressed to Judge Garrison."

In my opinion the Probate Judge would be liable on his bond for the amount of any warrant drawn and paid by the county depository since the rendition of this opinion, in payment of claim of person related within the prohibited degrees to any member of the Court of County Commissioners.

Code 1923, Section 321.
Biennial Report of Attorney General, 1928-1930, page 549.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 13, 1931

Hon. G. L. McCurdy,
County Superintendent of Education,
Fort Payne, DeKalb County, Ala.

School board vacancy—how filled.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of February 26, 1931, in which you state that a vacancy occurred on your Board of Education of DeKalb County. On January 27, 1931 at a regular meeting of the Board the four remaining members selected a member to fill the vacancy, giving the party who was elected three favorable votes. At a regular meeting on February 27, 1931, the question of the approval of the minutes came up, two of the members objected to the minutes of the previous meeting not that they were incorrect but stated that they had changed their mind as to the election and refused to adopt the minutes of January 27, 1931.

You request my opinion:

Does it require the approval of the minutes of the previous meeting to make such selection legal?

It is my opinion if there were a vacancy on your School Board and if at a regular meeting of the Board at which the four remaining members were present on January 27, 1931, a majority of the members voted to fill the vacancy by electing someone to the position, then, in that event, the party so elected on taking the proper oath of office is qualified and becomes a member of such board under Article 5, Section 882, School Code 1927.

It is my opinion that the only office the approval of the minutes could have is to see that they speak the truth and if they do not speak the truth to make them do so, and that the acts of the board nowise depends on subsequent approval or ratification of the minutes, if the minutes speak the truth and if any member fails or refuses to approve the same when found correct, it is my opinion this can be compelled by proper action.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 13, 1931

Hon. H. J. Brogden,
Judge of Probate, Covington County,
Andalusia, Alabama.

Before filing report of proceedings of stockholders increasing the capital stock of a corporation, the corporation must pay to the judge of probate the same amount of charter fee as is required to be paid by a corporation when originally organized.

Opinion by assistant Attorney General Evans.

Dear Sir:

Receipt of your letter of March 9, 1931, is acknowledged. You state that a corporation was organized in your County some years ago for the capital stock of $2500.00. At the time of organization it paid a charter fee of $5.00 as provided by Section 6969 of the Code, 1923. Said corporation now proposes to file the report of the proceedings of the stockholders of said corporation increasing the capital stock of the corporation to $5,000.00.

You ask my opinion as to what amount such corporation shall pay before filing such report of increase of the capital stock.

In reply will say that by Section 6972 of the Code of 1923, such increase so far as the amount of the charter fee is concerned is treated exactly as the original charter fee of the corporation was treated. It requires the payment of a minimum fee of $5.00 for filing the report of the proceedings of the stockholders increasing the capital stock of said corporation.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 13, 1931

Hon. R. P. Williams,
Sheriff, Barbour County,
Clayton, Alabama.

Fees—Seizure fees in prohibition violations under Section 4654, Code of Alabama, 1923.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of February 28, 1931, relative to seizure fees in favor of sheriffs under Section 4654, Code of Alabama, 1923. You inquire as to whether or not this fee is a lawful item of costs in case the defendant is convicted and sentenced to hard labor to pay said fine and costs.

I am of the opinion that said fee is a lawful item of costs in such an instance.

Biennial Report, Attorney General, 1928-1930, p. 18.

But when one is convicted in prohibition violations, the seizure fees under Section 4654 attach only upon conviction and after a judicial ascertainment of the amount of fee and to whom said fee is due to be paid.

Biennial Report, Attorney General, 1928-1930, p. 572.

When said fee attaches as part of the costs, the defendant can elect to pay, confess judgment or be sentenced to hard labor for the payment of same.

If he elects to serve hard labor to pay said costs, no execution can issue against him. In such a case the Convict Department pays only the costs provided by statute, and there is no provision of law for the payment of seizure and mileage by said department. That is to say, where execution may not legally be issued in case of a conviction, the fees here considered are not a legal charge against the fine and forfeiture fund of the county.

Biennial Report, Attorney General, 1928-1930, p. 18.

Section 4039, Code of Alabama, 1923, as amended February 18, 1927 (Acts 1927, p. 45), provides the method and manner of payment of fees from the fine and forfeiture fund. But in order for fees to be paid from said fund the provisions of said section must be strictly followed. That is, either where the defendant has not been convicted and costs not imposed on the prosecutor, or where defendants have been proved insolvent by the return of executions "no property fund," or in cases where the State entered a nolle prosequi, etc. In other words, in case of a conviction, if no execution could legally issue fees could not be paid from this fund.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 13, 1931

Hon. M. A. Argo,
Tax Collector, Walker County,
Jasper, Alabama.

Tax Collectors are bound by law and are under no legal obligation to abide by joint resolution of the House and Senate of Alabama.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I acknowledge receipt of your letter in which you state:

"I have a copy of a joint resolution adopted by the House and Senate of our present legislature, dated February 27, 1931, requesting all tax collectors of the various counties to please refrain from cre-

ating any additional cost on the taxpayers until after the legislature has reconvened and to refrain from giving the notices now required by law and to refrain from selling any personal property in certain cases etc."

You ask my opinion on the following:

(1) As a matter of law, does this resolution prohibit me as tax collector for Walker County, from proceeding in the regular manner of listing the property of delinquent taxpayers and serving notices now required by law on delinquent taxpayers?

(2) As a matter of law, should I, as the tax collector for Walker County, refrain from listing property with the Probate Judge and sending out notices until it is too late to advertise and sell within the time as now provided by law, be protected from the loss of any taxes caused by such delay?

(3) Is it legal for me to send out notices to delinquent taxpayers before the legislature has reconvened and before any law is enacted giving additional time for the payment and collection of taxes, and should such notices be sent to delinquent taxpayers before any such legislation is enacted, will the cost of such notices be a proper charge against the taxpayer or will in the event of the passage of such legislation cause such cost to be illegal and charged back to me as tax collector of Walker County?"

In answer to your first question I advise that this resolution does not prohibit you as tax collector from proceeding in the regular manner of listing the property of delinquent taxpayers and serving notices now required by law on delinquent taxpayers. Tax collectors are bound by regular enacted statutes and joint resolutions contrary thereto are mere recommendations.

In answer to your second question it is my opinion you should do these things which are required by law and in the manner provided by law.

In answer to your third question I advise in my opinion it is your duty to proceed in the same manner as if this joint resolution had never been passed. Who will be responsible for the costs should the legislature after the recess extend the time of payment for delinquent taxpayers. I am unable to advise, until such legislation is enacted and the provisions are before me.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 13, 1931

Hon. E. J. Garrison,
Judge of Probate, Clay County,
Ashland, Alabama.

County Commissioners—May employ road crews provided no person so employed is related to any of the Court.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of February 28, 1931, in which you request me to give a ruling on the rule or regulation made by your Court of County Commissioners, which is as follows:

> "The road work shall be done by regular crews for each commissioner's district, and these crews shall be under the immediate supervision of said commissioner. The men composing these road crews shall be elected by the whole court; no commissioner alone, shall have authority to employ anyone on said crews; nor shall any commissioner vote on the application of anyone for a position on any crew if the applicant is related to said commissioner by blood or marriage within the fourth degree; such applicant shall be employed or his application rejected, by a majority of the court who are not related as above stated. It is further ordered that no supervisor of roads be employed in this county."

You state that this is adopted under the provisions of Section 1347 of the Code of 1923, and you also state that if valid it supersedes Section 5076 of the Code, which was construed in an opinion of this office rendered to you on February 23, 1931.

It is my opinion that this regulation is valid with th exception of the following portion "nor shall any commissioner vote on the application of anyone for a position on any crew if the applicant is related to said Commissioner by blood or marriage within the fourth degree. Such applicant shall be employed or his application rejected by a majority of the court who are not related as above stated." This provision was fully covered by the opinion above referred to and it was therein held that the Court of County Commissioners was without authority to employ a relative of any member of the Commission whether the related member took part in such person's election or not.

As I understand your letter, you take the position that if Section 1347, Code of Alabama, 1923, be valid, it supersedes Section 5076 of the Code, 1923. I do not think so. Section 5076 was passed originally in 1923 while Section 1347 was in the Code of 1907 and was amended by the Acts of 1915. Hence Section 5076 is a subsequent enactment. Both Sections appearing in the Code of 1923 are to be construed in pari materia, and

under the construction heretofore given to Section 5076, Section 1347 does not authorize the employment of relatives.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 14, 1931

Hon. S. P. Dunn,
Judge of Probate, Conecuh County,
Evergreen, Alabama.

County Board of Education—authority to pay such proportion of salary of County Superintendent of Child Welfare as may be agreed upon between it and the County Board of Child Welfare, The County Board of Education and the Court of County Commissioners or Board of Revenue.

Opinion by Assistant Attorney General Otts.

Dear Sir:

Answering your letter of March 7, 1931 wherein you give statement of facts and make inquiry as follows:

"Please give me your opinion with reference to whether or not a County Board of Education may pay the salary of a Child Welfare Superintendent if the County Board of Revenue makes less than forty per cent of the appropriation for said salary."

Will state in answer to your inquiry that the County Board of Education may pay the salary of the Child Welfare Superintendent if the County Board of Revenue agrees thereto even when the County Board of Revenue makes less than forty per cent of the appropriation of said salary.

I would refer you to Section 150, Code of Alabama, 1923, which reads in part as follows:

"Powers of county board of child welfare.—The county board of child welfare shall have power: I. To employ an executive agent to be known as the county superintendent of child welfare, who shall serve at the pleasure of the board and whose salary shall be fixed by said board by and with the consent of the county board of education and court of county commissioners, or board of revenue of the county, **one half of which shall be paid out** of public school funds of the county and one-half out of public funds of the county; or in such other proportion as may to agreed upon by the boards authorized to

make payment by this article and the county board of child welfare, the court of county commissioners or board of revenue of a county * * *."

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 14, 1931

Hon. Landon G. Smith,
Alabama Highway Director,
Montgomery, Alabama.

State Highway Department has authority to pave Federal Aid Project within the limits of a city of over five thousand inhabitants with the city's consent, or when project was undertaken prior to the passage of the Act of the Legislature of 1927.

Opinion by the Attorney General.

Dear Sir:

This is to acknowledge the receipt of your letter of March 11th, in which you state that during the year 1926 the Highway Department made surveys and plans and acquired the right-of-way and executed a contract for grading and draining the highway extending from the end of the city pavement on Dallas Street to and across Valley Creek and toward Orrville. This contract included the grading of this unpaved section of approximately four hundred feet together with a bridge over Valley Creek which creek is the city limit line. You refer to an Act of 1927, which prohibits the Highway Department from undertaking projects within the limits of a city of five thousand or more inhabitants.

I note that you state that this project was undertaken during the year 1926 and a contract executed for the grading and draining of the project within the city limits. Note that this was prior to the passage of the Act of 1927.

I am of the opinion that in view of the fact that this project was undertaken prior to the passage of the Act of 1927, you have authority to complete the project by paving the same and the State funds, and any supplemental funds coming from the Federal Government may legally be used for this purpose.

I am also influenced to this conclusion in view of the fact that I am of the opinion that the Act of 1927 spoken of, was enacted as a protection to cities having a population of five thousand or more. It was thought necessary to protect their municipal water works, sewerage systems etc., by prohibiting the digging up of the same by State surveys or road projects.

In the instant case, you enclose to me a letter from the City of Selma signed by the Mayor of Selma to the effect that the City of Selma is willing for the State to complete this undertaking by paving this strip of four hundred feet within the city limits.

In my opinion, the evidence furnished of the willingness on the part of the City for the State to complete the project, it had previously undertaken, is sufficient authority for you to proceed to complete this undertaking as originally planned or possibly contemplated.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 14, 1931

Hon. R. H. Walker,
Senator, First District,
Athens, Alabama.

1. County Commissioners have no authority to pay for publishing names of election officers in newspaper.

2. Notice of election can be published in only **one** newspaper.

3. County pays expenses of county bond election.

4. Commissioners have right to employ attorney.

Opinion by Assistant Attorney General Otts.

My Dear Senator:

I have your two letters of March 9th in which you ask for opinion on the following:

1. Whether or not the County Commissioners are authorized to pay for printing the names of election officers under Section 27 of the Municipal Bond Code?

2. As to whether or not a notice of election can be published in more than one paper in the County?

3. As to who should pay the expenses of election held on county bond issue?

4. As to whether or not Commissioners have the right to employ attorney to advise them?

Under Section 27 of the Municipal Bond Code it is provided, after setting out who shall select the election officers and when, as follows:

> "2294 (27) Conduct of Election.—* * * The sheriff shall notify the managers and returning officers of their appointments, and shall send out the boxes and ballots to the several beats or voting precincts in the county promptly."

Section 25 reads in part as follows:

> "2294 (25) Notice of election.—Notice of such election shall be given by publication in a newspaper published in the county in which the election is to be held once a week for three successive weeks, the first publication to be made at least thirty days before the election * * *."

Threfore, I am forced to the opinion that the publication should be in only one newspaper.

Answering your question as to who pays the expenses of the election, I would herein quote you Section 28 of the Municipal Bond Code which is as follows:

> "2294. (28) Expenses of Election.—All expenses for holding such elections shall be paid out of the treasury of the county in which the same is held; and the managers, clerks, and returning officers shall be entitled to the same compensation as managers, clerks, and returning officers of the general election."

The opinion to which you refer in your letter would not answer your question at all, it being to the effect that county solicitors could not charge for advising Commissioners Courts as to do so was one of his duties under the law.

Answering your question as to whether or not Court of County Commissioners may retain or employ attorneys I would herein quote to you Section 5498, Code of 1923, subdivision 8:

> "All county solicitors, all circuit solicitors, and any solicitor of any court of record, shall give every county official opinions in writing on all matters connected with their respective offices except in suits against official's bonds. **But courts of county commissioners or boards of revenue may retain or employ attorneys, when it is deemed advisable or necessary, and the agreed compensation to them may be paid as are claims to grand and petit jurors."**

You will note that this Section of the Code clearly defines the duties of solicitors in the matter of giving official opinions and also clearly gives

authority to the Courts of County Commissioners to retain or employ attorneys when deemed advisable or necessary.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 16, 1931

Hon. G. H. Howard,
Judge of Probate,
Wetumpka, Alabama.

Filing tax—Probate Judge has no right to refund even though instrument may be withdrawn.

Opinion by Assistant Attorney General Otts.

Dear Sir:

Your letter of March 4th. in which you ask us:

"Please advise us if we can legally refund the filing or privilege tax on an instrument that has been filed and later withdrawn without being recorded?"

has been received.

The tax you refer to as to deeds is fixed by Schedule 51 as set out on page 247 Revenue Laws of Alabama, 1929, (Acts 1927, p. 139, Section 21½), and in part, is as follows:

"No deed, bill of sale or other instrument of like character which conveys any real or personal property within this State, or which conveys any interest in any such property, except the transfer of mortgages on real estate or personal property within this State upon which the mortgage tax has been paid, deeds or instruments executed for a nominal consideration for the purpose of perfecting the title to real estate, and deeds and other instruments or conveyances, executed prior to October 1st, 1923, **shall be received for record unless the following privilege or license tax shall have been paid** upon such instrument before the same is offered for record * * * * * *."

As to mortgages, Schedule 124, which is on page 282 of the Revenue Laws of Alabama, 1929, (Acts 1923, p. 152, Section 4½), and in part, is as follows:

"No mortgage, deed of trust, contract of conditional sale, or other instrument of like character which is given to secure the payment of

any debt, and which conveys any real or personal property situated within this State, or any interest therein, **shall be received for record unless the** following privilege or license taxes shall have been paid upon such instrument before the same shall be offered for record * * *."

It is clear in our minds that these taxes are for the filing for record of an instrument and have nothing to do with the recording thereof other than that you cannot receive for record such instruments until or before the filing tax provided by these sections shall have been paid.

By paragraph (i) of Schedule 24, which paragraph is on page 288, Revenue Laws of Alabama, 1929, which is provided as follows:

"(i) Any probate judge, who shall file for record, or shall receive any mortgage, deed of trust or other instrument in the nature of a mortgage, without collecting the recording or registration tax provided for the recording or registration of such instruments, or who shall fail to certify the fact that such tax has been paid before filing and recording such instrument, shall be guilty of a misdemeanor and upon conviction shall be fined not less than ten or more than one thousand dollars."

We are therefore forced to the conclusion, though it may work an apparent injustice in some instances, that you have no authority to refund this tax though the instrument has not been recorded and is withdrawn.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 16, 1931

Hon. Gorge B. McDonald,
Judge of Probate, Coosa County,
Rockford, Alabama.

Counties may be authorized to pay Workmen's Compensation Insurance on employees.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of February 27, 1931, in which you state that during past year the Dean Insurance Agency of Alexander City wrote Coosa County Commissioners a compensation policy covering work of road employees only. You state that the State Auditor has advised you that there is no law under which the county can pay this premium.

You ask my opinion whether this premium can legally be paid.

Section 7543 of the Code of 1923 provides in part as follows:

"Any employer who regularly employs less than sixteen employes in any one business or any **county, city, town, village** or **school district** may accept the provisions of articles 1 and 2 of this chapter by filing written notice thereof with the probate judge of each county in which said employer is located or does business, said notice to be recorded by the judge of probate for which he shall receive the usual fee for recording conveyances, and copies thereof to be posted at the places of business of said employers. Said employers who have so elected to accept the provisions of articles 1 and 2 of this chapter may at any time withdraw the acceptance by giving like notice of withdrawal."

It would seem that the minutes of the Commissioner's Court should affirmatively show that such written notice had been filed with the Probate Judge prior to the time when such policy was issued and that same had not been withdrawn. Unless such notice has been filed and not withdrawn there is no authority for the Court of County Commissioners to pay claim for premium for compensation policy on road employees.

If the conditions of Section 7543 have been complied with, then the County is authorized to come under the provisions of Articles 1 and 2 of Chapter 287 of the Code of 1923, and under Article 2, Section 7584, the employer is given the right at his option, to "insure and keep insured his liability thereunder."

It follows therefore, that if the proper notice was filed with the Probate judge, that the same was not withdrawn and the Court of County Commissioners duly exercised its option, and insured the County's liability under said Articles 1 and 2, the premium on such policy is a valid obligation of the county.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 16, 1931

Hon. H. W. Owens,
Judge of Probate, Henry County,
Abbeville, Alabama.

1. Foreman employed by the Court of County Commissioners may employ his own relatives but not those of a member of the Court of County Commissioners.

2. Person other than the Probate Judge recording the minutes of the Court of County Commissioners does same as the act of the Probate Judge except as provided in Section 6764, Code of 1923.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of March 5th in which you state: "Re Section 5076 Code 1923, employing relatives of County Commissioners."

"1. Where a county is divided into Commissioners Districts like this County (Henry), as per local acts 1923 page 58, and the Commissioner's Court under general authority of law authorizes each Commissioner in and for his respective district to employ a road foreman under bond for duties of such employment, including superintendency of road and bridge construction and maintenance, accounting for all materials committed to his charge and disbursing compensation to his force on pay rolls presented by him to said court and ordered paid him for such disbursement, and who such foreman, is authorized by his Commissioner to employ his force, is such foreman prohibited by above statute from employing his own relatives or relatives of any member of said Court?

"2. Where the Probate Judge is Ex Officio Chairman of such Court and being required to keep and write the minutes of said Court as its clerk, is the Probate Judge prohibited by said statute from having his chief clerk, who is his son, from recording such minutes, when compensation therefor is made to the Probate Judge."

In answer to your first inquiry, it is my opinion that the foreman employed as set out in said question is not prohibited from employing his own relatives. Section 5076 merely prohibits the employment of relatives of members of a Court of County Commissioners. I do not think that such foreman can employ any person related within the fourth degree to any of the Commissioners.

See opinion to Hon. E. J. Garrison, Probate Judge, Clay County, of Feb. 25, 1931.

In answer to your second question, it is my opinion that the Probate Judge's son can do the actual writing up of the minutes for his father, the Probate Judge, provided he receives no compensation therefor. His act is the act of the Probate Judge and in doing so, he does it, not in his capacity as Clerk, but merely for the Probate Judge and as his act for which the Probate Judge is fully responsible. The law specifically provides that the Probate Judge must record the proceedings of the Court. See Section 6763 of the Code, 1923.

Section 6764 provides:

"When the court is held without the attendance of the Judge of Probate a special clerk must be appointed for such term, who must be paid by the Probate Judge."

It therefore appears that if the Probate Judge is absent a special clerk must be appointed at his expense. If he should employ some person whether it be his son or some person not related to him to read the minutes at some time when he is present, then such person does it as the act of the Probate Judge and the Probate Judge is liable as for his own act.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 16, 1931

Hon. J. E. Searcy,
Circuit Clerk,
Abbeville, Henry County, Alabama.

Fees: Salaried solicitors' five per cent commission on forfeiture in Circuit Court go to county.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of March 7, 1931. You state that three parties in your county forfeited their bonds for appearance in the Circuit Court, and said forfeitures have been made final. You refer to Section 3738, Code of Alabama, which is the schedule of solicitors' fees taxable against defendant on conviction. In this schedule appears the following:

"On all forfeitures collected by the clerk or sheriff, five per cent thereof."

You request my opinion:

Does this five per cent commission go to the State or County? In answer will state the five per cent commission goes to the county.

An examination of Sections 7791, 7792 and 7795, Code of Alabama, 1907, which were later incorporated into the Code of 1923 as Sections 5509, 5511 and 5515, indicates to me that this particular fee is payable into the County Treasury.

You will understand, of course, that the five per cent commissions above mentioned are to be **added** to the amount of the judgment.

Opinions Attorney General, 1928-1930, p. 563.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 17, 1931

Hon. A. L. Hasty,
Judge of Probate,
Linden, Marengo County, Alabama.

Pool Room—Bond of person operating.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of February 28, 1931, in which you make the following inquiries:

Is it still required that an operator of a pool room make bond?

There is such an Act, viz., Section 3 of an Act approved September 5, 1923, (General Acts 1923, p. 224). This Act reads in part as follows:

"* * * There shall also be filed with such application a bond in the penal sum of $1000.00, payable to the State of Alabama * * *."

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 18, 1931

Hon. B. M. Miller,
Governor of the State of Alabama,
CAPITOL.

Member of Jury Board may not hold any position from which he receives compensation for carrying United States mail.

Opinion by the Attorney General.

My dear Governor:

This is to acknowledge receipt of your letter of March 16, 1931, in which you inquire whether or not, under an Act approved February 20,

1931, a person is disqualified from serving on the Jury Board because he receives compensation from the United States Government for carrying the mail from the railroad station to the postoffice. You state that the contract for carrying the mail is let on competitive bids.

Unquestionably the compensation received by a person carrying the mail under the circumstances set out in the above paragraph comes from a contractual employment. This person, while he performs a public duty under the Federal Government, is in no sense of the word an officer of the Federal Government.

It is not necessary in the instant case, in view of the Act approved February 20, 1931, to determine whether or not this person would be holding two offices of profit and would therefore come within the inhibition of Section 280 of the Constitution which prohibits the holding of two offices of profit at one and the same time. Section 2 of the above referred to Act provides inter alia that members of the Jury Boards shall not, during the term for which they are appointed and during their tenure in said office, hold any other office by appointment or election, **or perform any other public duty under the Federal, State, county, or municipal government which carries with it any compensation whatsoever.**

The fact that the above mentioned Section of the Act of February 20th especially mentions the holding of office and goes further and provides that one shall not prform any public duty under the Federal Government which carries with it any compensation whatsoever is indicative of the intention of the Legislature to prohibit one from serving on the Jury Board even though the compensation that he receives from the performance of a public duty was merely contractual.

The writer is of the opinion that one may not serve as a member of the Jury Board and draw compensation for the performance of the public duty mentioned in your inquiry.

I hope the above expression furnishes you with the desired information.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 18, 1931

Hon. A. L. Baker, Sheriff,
Athens, Limestone County, Ala.

County Boards of Education are not required to furnish school terms of equal length in different school dictricts, though special three mill tax may be collected in each and both districts.

It is not a violation of law for the County Board to furnish different terms in different districts.

Opinion by Assistant Attorney General Otts.

Dear Sir:

Answering your letter of March 3rd, in which you give us the following statement of facts:

"1. Is a county that does not share in the State Equalization Fund required to provide school terms of equal duration in the special three mill tax districts that are levying and collecting the three mill tax? (The county is levying the general four mill tax).

2. Is it a violation of the law for a County Board of Education to provide a term of six and three-fourths months for one school and nine months for another school if both schools are located in districts levying the three mill tax? Neither district has an accredited high school located in it.

3. Should a school located in a district that does not pay much three mill tax be deprived of a seven months term, and another school located in a rich district get nine months? If this practice is a violation of the law, what is the penalty?"

would say:

Answering your first inquiry, I know nothing in the School Laws which would require the County School Board to provide **equal terms** in the different districts as inquired about in your first inquiry.

Section 256 of Article XIV, Alabama School Code, 1927, provides in part, as follows:

"256 * * * * * * The public school fund shall be apportioned to the several counties in proportion to the number of school children of school age therein, and shall **be so opportioned to the schools in the district or townships in the counties as to provide as nearly as practicable, school terms of equal duration in such school districts or townships.**"

In answer to your inquiry number two, to do such a thing is no violation of law. The funds derived from the special taxes in districts may differ in amounts depending of course upon the valuation of properties therein and therefore the amounts received from the levy of such taxes may in one district greatly exceed that received in the other district.

"The funds arising from levying the special tax for school purposes in any school district under the jurisdiction of the County Board of Education shall be used for the exclusive benefit of the public schools of such district * * *."

See Section 289 of Article XIII, Alabama Code, 1927.

We have in our answers to your questions 1 and 2, given answer to your inquiry No. 3; except we would add that to do as your question 3 suggests is no violation of law, and therefore, there is no penalty for the doing thereof.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 18, 1931

Hon. Raymond Murphy,
County Solicitor,
Florence, Lauderdale County, Ala.

Fees-Per diem and mileage fees of Grand Jurors.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of March 14, 1931, in which you state that the grand jury of your county was empaneled on March 2, 1931, and stayed in session until March 14, 1931. Said jury made a partial report and requested the Judge to allow them to recess until March 31, 1931 which request was granted. The reason for same being that the evidence in certain cases was not complete, and would not be complete until that date.

The clerk of the court paid said jurors their mileage and daily attendance in full to March 14, 1931.

You request my opinion as to whether or not said grand jurors would be entitled to the allowed mileage when they reconvene March 30th.

I am of the opinion that your question should be answered in the negative.

The mileage and per diem of grand jurors are paid under Section 3760, Code of Alabama, 1923, which is as follows:

"3760. Regular jurors' fees; proved by oath of juror; certificate of clerk.—Regular jurors, grand and petit, are entitled to three dol-

lars for each day's services, five cents for each mile traveled in going to and returning from court, and ferriage and toll, to be proved by the oath of the juror before the clerk of the court, whose duty it is to give each juror a certificate, stating therein the number of days he has served, the number of miles he has traveled, the amount of ferriage and toll he has paid, and the amount of compensation to which he is entitled; which certificate shall be receivable in payment of county taxes, and other county dues, and payable out of the county treasury."

Grand juries are assembled and empaneled under Section 8665, Code of Alabama, 1923.

The term of a duly empaneled grand jury extends from the time of the appointment until the expiration of the term by operation of law, and no preliminary act of any judge can limit its powers.

Riley v. State, 209 Ala. 505.

A grand jury that has been allowed to disperse can be reassembled by the presiding judge.

Kilpatrick v. State, 213 Ala. 358.

Construing together these Code sections and the decisions of our Supreme Court, I am of the opinion that a grand juror is entitled to mileage in going to and from court **only one time** for each time said grand jury is first empaneled, and for each time said grand jury is reassembled.

A mere recess, with a definite date set for convening, is not, in my opinion, such a dispersing as would require a reassembling, which would warrant the payment of additional mileage fees.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 18, 1931

Hon. S. W. H. Williams,
Judge of Probate, Hale County,
Greensboro, Alabama.

Refund of taxes paid through error.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of March 11, 1931, in which you state:

"In fixing the limitations and boundary of school district number 21, the lands of a taxpayer or a part of them, were erroneously included in the limits of that district, and on account of this error the taxpayer has been compelled to pay the school tax for a period of seven years. The information here sought, is can the commissioners court of Hale County legally refund him this money?

If it cannot refund all of it, can the county pay any part of it? This taxpayer has requested the Commissioners Court to pay the money back to him, and we have promised, that we would let him know at our next meeting. We are therefore asking you if possible, to let me have this information at your earliest convenience."

In reply to your letter, I beg to advise that the information on the refund about which you inquire is to be found in Sections 3140, 3141, 3142, and 3143, of the Code of 1923. The method of application for the refund and the payment of same are fully provided for therein. The refund arising under these Sections is limited to two years.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 19, 1931

Hon. H. J. Brogden,
Judge of Probate, Covington County,
Andalusia, Alabama.

1. Municipalities may require merchants to present inventories in determining the amount of license due.

2. Persons licensed for dry cleaning and pressing cannot carry a stock of clothing and sell same without paying regular merchants license.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of March 10, 1931, in which you ask my opinion on the following:

1. Has the City of Florala the authority to request the various merchants of Florala to present their last inventory to the city council in order for them to arrive at what they term a proper license to charge each merchant as a city license to do business in Florala?

2. Can a person who only pays state and county and city license to do dry cleaning and pressing, take orders for, buy and sell clothing and other merchandise, without paying license as other merchants who are in the mercantile business?

In answer to your first question, I advise that Section 2134 of the Code of 1923 specifically authorizes municipalities to license businesses and occupations and specially to require sworn statements as to the amount of capital invested, or the value of the goods or stock, or amount of sales or receipts, where the amount of the license is made to depend upon the amount of capital invested, or value of goods or stock or amount of sales or receipts, and to punish any corporation for failure or refusal to furnish sworn statements or giving of false statements in relation thereto. It therefore appears that the city council may not only request such inventories, but require them.

In answer to your second question, I advise that if such persons carry no stock whatsoever and merely take orders which are sent without the State and the goods for such orders are shipped from without the State, then the town authorities could not levy a license on them for such business, in my opinion. However, if such person carries a stock of clothing or other merchandise he would be subject to the same license on the stock of goods as general merchants would be.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 19, 1931

Hon. J. A. Driver,
Sheriff,
Geneva, Geneva County, Alabama.

Cost and fine in criminal cases—How paid and how disposed of.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of March 9, 1931, in which you request my opinion as follows:

"In a criminal case where a fine was assessed and the court allowed the defendant to confess judgment, with sureties, for the fine and costs and stay of execution was granted under the provisions of Section 5288 of the Code of Alabama, would the sheriff be entitled to a deduction of 5% monies collected by execution as provided by paragraph 3, section 10189 of the Code of Alabama? Should the money so collected be paid by the sheriff directly to the County Treasurer or to the Clerk of the Circuit Court?

You request my opinion:

Would the sheriff be entitled to a deduction of 5% monies collected by execution as provided by paragraph 3 section 10189, Code of Alabama, 1923, if the monies so collected is paid by the sheriff directly to the county treasurer to the clerk of the circuit court?

It is my opinion that when you collect a fine and cost as stated above it is your duty to pay this to the Clerk as he is the one who is required to pay out such money to the party to whom it belongs and when it is handled in this way you would not have any money coming from this source that would go to the County Treasurer. If it were not handled this way the Clerk would never be able to know just when a judgment of this character was fully satisfied. He must pay out such witness fees to the witness receiving the certificate of attendance, then whatever money is going to the County Treasurer it is a duty to pay it taking the County Treasurer's receipt for same which should be receipted on the fee book.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 19, 1931

Hon. Gage Head,
Judge of Probate,
Columbiana, Alabama.

Filing tax due on long term lease.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of February 28th, in which you ask me whether a filing tax is required on an instrument presented to your office a part of which you quote as follows:

"Bearden is leasing a building from Lightcap—'to be used as a service station and garage, for and during a term of 5 years to-wit: from the 1st day of March, 1931, to the 28th. day of February, 1936 and covenant to keep the lessee in possession of the premises during said term.

1. In consideration whereof the lessee agrees to pay the lessor, at the office of said lessor, for the same, $75.00 on the 10th day of each month in advance, being at the rate of $900.00 per annum. Should the lessee fail to pay the rents as they become due, as aforesaid, or violate any other condition of this lease, the lessor shall then have the right at his option to re-enter the premises and annul this

lease. And in order to entitle the lessor to re-enter, it shall not be necessary to give notice of the rents becoming due or unpaid, or to make any demand for the same, the execution of this lease, signed by the lessee, which execution is hereby acknowledged, being sufficient notice of the rents being due and of the demand for the same, and shall be so construed, and law, usage or custom to the contrary notwithstanding; etc. * * * *."

It is my opinion that this instrument is liable for the filing tax provided by Section 21½ Acts 1927, page 139.

In an opinion rendered May 13, 1927, Biennial Report Attorney General 1926-28, page 183 it is stated: "Under the authority of Milliken vs. Faulk, 111 Ala. 658, and that of Riddle vs. Brown, 20 Ala. 412, it is my opinion that such a lease, which must be in writing to be valid is entitled to registration upon the theory that it conveys an unconditional estate in the land leased. It, therefore, conveys an interest in real property and under the filing tax law of 1923 such an instrument may pay filing tax. The amount of the filing tax, however, would depend upon the cash value at the date of making such lease of the interest conveyed * * *. The proper thing to do is to ascertain the proper cash value at the date of making of the lease of each of such payments and then add together the present cash value of all of such years using a discount of eight per cent per annum compounded."

I am in accord with the principles laid down in this opinion and in determining the amount to be paid the method suggested and which is set out in detail in the case of Reiter Connelly Mfg. Co. v. Hamlin as Admr., 144 Ala. 220, can be used.

Biennial Report Attorney General, 1926-28, pp. 183, 621.

Biennial Report Attorney General, 1928-30, pp. 538, 987.

Opinions Attorney General, (Office Edition) May 13, 1927, Vol. 2, p. 134.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 19, 1931

Hon. John Brandon,
State Auditor,
CAPITOL.

Where real estate, bought in by the state at sale for payment of taxes, is redeemed, the judge of probate, on remitting to the State

Treasurer, during the month of redemption, the state's proportion of such money, is entitled to retain two and one-half per cent of the proportion belonging to the State as his commission.

The amount paid for advertising such real estate for sale, is part of the proportion due the state.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Receipt of your letter of February 4, 1931, is acknowledged. You state the following:

The real estate of a taxpayer is offered for sale, as provided by Section 252 of the Revenue Act, 1919 (Acts 1919, page 357) for the payment of taxes assessed against him. At such sale, no person bids for such real estate an amount sufficient to pay the sum specified in the decree of sale, and the costs and expenses subsequently accruing; so, the judge of probate, as provided by Section 255 of the Revenue Act 1919 (Acts 1919, page 357) bids in such real estate for the State at a price equal to the sum in the decree of sale and the subsequently accruing costs and expenses.

Subsequently, such taxpayer desiring to redeem such real estate from such tax sale, deposited with the judge of probate in the county in which such real estate is situated, the amount of money for which such real estate was sold, with interest thereon at the rate of fifteen per cent per annum from the date of sale, together with the amount of all taxes due on such real estate since the date of sale, including the current tax assessing year, with interest thereon at the rate of eight per cent per annum from the maturity of such taxes, and all costs and fees due officers as set out in Section 291 of said Act, as provided in Section 290 of said Act.

You wish my opinion, as to whether or not, the probate judge, in making remittance, as required by Section 297 of said 1919 Revenue Act, is entitled, to deduct two and one-half per cent commissions on the amount paid for advertising such real estate for sale.

In my opinion the judge of probate is clearly entitled to deduct two and one-half per cent commissions on the amount paid for advertising such real estate for sale.

The amount bid by the Judge of Probate for the State at the sale, included the sum specified in the decree and the subsequently accruing costs and expenses. The cost of advertising such real estate for sale was one of such expenses.—Section 255, Acts 1919, page 357.

Section 297 of the Revenue Act, 1919 (Acts 1919, page 369-370) provides:

"When lands which have been bid in by the State are redeemed, the judge of probate must, during the month in which said redemption is made, remit to the State Treasurer, at the expense of the State, the proportion of the redemption money belonging to the State, and pay to the County Treasury the proportion of such money belonging to the County, and to the proper authorities the proportion belonging to the school fund, if any; and **upon all such money** so paid over during the month of collection, he is entitled to commission at the rate of two and on-half per cent, which he may deduct therefrom; but he shall not be allowed any commissions on money not paid over" etc.

From the foregoing, it is clear, that when real estate is bought in by the State, when sold for the payment of taxes, the Judge of Probate, as provided by said Section 255, bids in the said real estate for a sum not exceeding the sum specified in the decree of sale and subsequently accruing cost and expenses.

The cost of advertising such real estate for sale is part of the cost and expenses accruing subsequent to rendering the decree. The decree provides that such real estate "be sold for the payment of said delinquent taxes, and said fees, charges and costs, and of the expenses of such sale." —Section 249, Revenue Act, 1919.

Said Section 290 provides what shall be paid in order to redeem land from tax sale where the same has been sold to the State. This amount includes the amount of money for which the lands were sold. The amount of money for which the lands were sold to the State included the advertising cost.

When all the money has been paid in for redemption, the proportion of the redemption money belonging to the State must be remitted to the State Treasurer; the proportion of such money belonging to the County must be paid to the County Treasury; and proportion thereof belonging to the school fund, if any, to the proper authorities.

"Upon **all such money so paid over** during the month of collection, he is entitled to commission at the rate of two and one-half per cent, which he may deduct therefrom, but he shall not be allowed any commissions on any money not paid over."—Section 3117, Code 1923; Section 297, Acts, 1919, pages 369-370.

The opinion of February 6, 1931, being contrary to the foregoing, is overruled and withdrawn.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 19, 1931

Hon. Scott H. Corley,
Member Court of County Commissioners,
Kelton, Coosa County, Alabama.

Commissioners Court—is without authority to work and maintain streets and highways within the limits of any corporate towns located within the County.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of March 10, 1931, in which you request my opinion as follows:

> Am I as Commissioner of Coosa County authorized to use the County's property to scrape and put in condition the streets of Goodwater, Alabama?

It is my opinion that you are without such authority. Municipalities are authorized to collect taxes within its corporate limits for the purpose of maintaining the streets and highway within said towns. Article 4 of an Act approved August 23, 1927 General Acts 1927, p. 391, designates authority of the Commissioners Court and the Board of Revenue of the various Counties and States they have general supervision of public roads, bridges and ferries within their respective counties, and this clearly has reference to roads, bridges and ferries outside of the incorporated town that may be within the County.

City of Huntsville vs. Madison County, 166 Ala. p. 389.

Biennial Report Attorney General 1928-30 p. 1011.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 19, 1931

Hon. G. M. Turner,
County Treasurer,
Andalusia, Covington County, Ala.

Fine and Forfeiture Fund.—What can and what cannot be charged against same.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of February 28, 1931, in which you request my opinion as follows:

> Please advise me if the cost in the Tilman Davis case can be registered against the Fine and Forfeiture Fund of Covington County, in the event said Davis is electrocuted.

It is my opinion that if Tilman Davis is electrocuted the costs in his case cannot become a charge against the Fine and Forfeiture Fund of your county. Only such fees and costs as come under the Act of the Legislature approved February 18, 1927, (General Acts 1927, p. 45) can be charged against such fund. This Act is amending Section 4039 of the Code of Alabama, 1923, and has to do with the fine and forfeiture funds of the various counties.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 19, 1931

Hon. S. J. Sanders,
Treasurer, Fayette County,
Fayette, Alabama.

Bailiffs of Court—Sheriff and Chief Deputy cannot serve in this capacity and receive pay for same.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of March 16, 1931, in which you state: Joe McConnell, Sheriff of Fayette County, and one Grady Mitchell, Chief Deputy Sheriff of Fayette County, have each presented you a certificate in the amount of $15.00 each signed by Judge R. L. Blanton, Circuit Judge. These certificates are for each of these individuals serving as bailiffs in the Circuit Court recently held in your County.

You request my opinion:

> Please advise me as to whether or not I would be authorized as Treasurer to pay these certificates.

It is my opinion you would not. You state the Chief Deputy Sheriff is paid $100.00 a month salary as such, and the Sheriff receives fees for his services. Under the opinion which you refer to in your letter (Bien-

nial Report of Attorney General, 1928-1930, page 282) it is my opinion the position which the writer of this opinion takes as to these matters is correct. Certainly Section 6716, Code of Alabama, 1923, in making provisions for bailiffs for the Circuit Court did not contemplate or have in mind these appointments going to the Sheriff or to the Chief Deputy Sheriff. By their office they are duly constituted officers of the Court and are subject to the orders of the Court in the performance of its duties. The legislative intent was clearly that where the duties of the Court and the business of the Court required more assistants or more help than was able to be furnished by the Sheriff and his Deputy that the Court might appoint other bailiffs not to exceed four to serve in every court or division.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 19, 1931

Hon. J. A. Driver,
Sheriff,
Geneva, Geneva County, Ala.

Feeding prisoners—from sentence up to date they are turned over to the Convict Department.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of March 9, 1931, in which you state that the prisoners in your county sentenced to hard labor are turned over to the Convict Department.

You request my opinion:

> Who pays the cost of feeding prisoners from the time they are sentenced by the State and the date they are delivered to the Convict Department?

This cost is paid by the Convict Department. You should make out your account just the same as it is made out against the State for feeding prisoners and send it to the Convict Department and it will take care of this item of cost.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 21, 1931

Hon. Walter K. Smith,
Chief Examiner of Accounts,
CAPITOL.

Justice of the Peace—fee in detainer cases.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of March 12, 1931, in which you enclose a letter from Hon. Lewis Bowen, Assistant Examiner of Accounts, in which letter he refers to fees charged by Justice of the peace in unlawful detainer cases as follows:

> Every summons in cases of forcible entry and detainer and unlawful detainer * * * * 50c.
>
> Each trial in such cases * * * * $2.00.

You request my opinion:

> An unlawful detainer suit is filed in the Justice's Court and on or before the date of trial the suit is dismissed upon the motion of the plaintiff. Should the Clerk of this Court charge and collect the item "each trial in such cases * * * * $2.00"?

It is my opinion that this item of $2.00 should be charged in every case where summons and complaint has been filed and the case docketed. The word trial here does not mean, in my opinion, that a trial must be entered into and evidence heard and final judgment on the merits had, but it is intended to include all proceedings of the Court after summons and complaint is filed and the case goes upon the docket for disposal. The dismissing of the case is the disposal of the case even if this is done at the request of the plaintiff. A judgment must be entered dismissing and the cost taxed by said judgment and it is clear to my mind that the legislative intent was that this $2.00 fee taxed should cover cases of this characer the same as if the case was tried upon its merits.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 23, 1931

Hon. B. Cooper,
County Treasurer, Marion County,
Hamilton, Alabama.

Commissioners Court—Mileage for supervising road work—Individual member contracting;
Jury—Pay in condemnation proceedings—no taxi fare;
County Treasurer—Duty as to audited claims;
Deputy Sheriff—Witness fee;
Juror—Witness fee—fee as Juror;
Bailiff—Witness fee—fee as Bailiff;
Commissioners Court—Minutes best evidence;
Officers—Illegal disbursements;
Probate Judge—Issuing warrants without action by Commissioners Court.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of March 13, requesting my opinion as follows:

1st. Can a member of the court of county commissioners legally charge and collect mileage for looking after roads and bridges?

2nd. Can a taxi driver legally charge and collect taxi fare for a mechanic to go out and work on a county road machine when called by a commissioner of the court?

3rd. Can the county legally pay the taxi fare for a jury to go out and look over lands under condemnation for roads and other public usage when the jury is so ordered by the Judge of the Circuit Court?

4th. When the county has no auditor and the auditing is done by the county commissioners and the probate judge, is it the duty of the county treasurer to audit said accounts before same are paid by him?

5th. Can the sheriff and his chief deputy draw witness certificates in criminal cases when attending court?

6th. When a man is serving on a jury or as a bailiff, can he legally draw witness fees also in criminal cases?

7th. If your answer to question No. 6 is in the affirmative, then can such person claim his per diem or mileage while serving as a juryman or bailiff in criminal cases?

8th. Should the minutes of the commissioners' court be written up and signed by the commissioners before any money is paid out of such claims?

9th. If an illegal warrant is issued by the probate judge and paid by the county treasurer without knowing it is illegal, who is responsible for said illegal payment?

10th. If the probate judge hires or contracts with a person to perform a certain job about the courthouse or jail and the work is done, then is it legal for the county treasurer to pay a warrant therefor drawn by the probate judge when the court of county commissioners is not in session?

I presume your questions contemplate construction of the general law and not any local or special statutes and on that assumption this opinion is based.

In your letter you do not state any facts showing the nature and character of the questions which make the advice sought necessary to the present performance of some official act that you must immediately perform (See Section 870, Code of Alabama, 1923). Hence I do not know what specific matters you have before you, and my advice must, therefore, be rather general in nature.

Answering your first question:

The probate judge, who is **ex officio** a **member** of the commissioners court, is not entitled to any other compensation for road service performed as probate judge and as **ex-officio** member of the court except as provided by Section 7285, Code of Alabama, 1923, which he cannot receive until compliance with Section 7265.

Opinions of Attorney General, 1928-1930, p. 656.

As to the **other** members of the commissioners court, I invite your attention to Section 6771, Code of Alabama, 1923, which provides in part as follows:

"**Each** member of the court of county commissioners * * * shall be paid out of the county treasury * * * for their services * * * the sum of three dollars per day **while occupied in the discharge of their duties in** letting out, inspecting and accepting, building, or repairing, of any county bridges, or county buildings or works, **and** five cents per mile for each mile **necessarily** traveled by them in so doing, said sums to be paid on **warrants** drawn on the county treasurer on the order of the county commissioners (meaning the order of the court). **No allowance shall be made to any commissioner for** per diem or mileage for inspecting roads, bridges, etc., **except when acting under authority of an order of the commissioners' court previously made.**"

The foregoing law contemplates a specific (and not a general) order for the particular commissioner (naming him) to do the specific work (accurately describing it) at a specific time (stating when). A general order is insufficient.

Opinions of Attorney General, 1928-1930, p. 65, 85.

There must be strict compliance with this statute in order to draw per diem and mileage.

Opinions of Attorney General, 1926-1928, pp. 351, 352.

Under the foregoing a general blanket order by the court to commissioner to "look after roads and bridges" would not comply with the statute.

Answering your **second** question:

The county is not liable for such taxi fare of a taxi driver thus called by an individual commissioner, he not having authority from the Court. But in the event a member of the court did so order a taxi driver for this purpose without first having authority from the court, and such work were performed for the county, in that event the court could ratify the unauthorized act.

Opinions of Attorney General, 1928-1930, p. 591.
Mobile County v. Maddox, 95 Alabama 336.

Under the broad powers of a commissioners' court by which it is given legislative, executive and judicial powers as to roads and bridges and power to make rules and regulations relating thereto, it would be proper for the court to establish, promulgate and enter on its minutes a definite rule or regulation for this and similar emergencies.

(Section 1347, Code of Alabama, 1923,) (as re-enacted Act 1927, p. 391).

However, the allowance of claims must be by the court in session and the law as interpreted in Opinions of the Attorney General, 1924-1926, p. 341, should be strictly followed.—See also Opinions of Attorney General, 1922-1924, p. 198.

Answering your **third** question:

I invite your attention to Section 7292, Code of Alabama, 1923, providing that the viewing jurors summoned under writs of ad quod damnum are each entitled to three dollars per day to be paid by the applicant for condemnation **before** return of the verdict.

I know of no provision of law authorizing additional expense of a taxi to transport them to the lands which it is being sought to condemn.

Answering your **fourth** question, I invite your attention to Sections 224, 225, 231 and sub-sections (4) and (5) of Section 6755, Code of Alabama, 1923, with reference to the commissioners' court's duties in reference to examination, auditing and allowance of claims. Your duties are set out in Section 303. I invite your particular attention to sub-section (2) of said Section 303. "You pay out of the general funds of the county on presentation and without being audited and allowed by the commissioners court, all grand and petit juror certificates, and you pay all other claims against the general fund that have to be audited and allowed **only after** they have been audited and allowed and a warrant has issued therefor, **but only to the extent so allowed,** any **warrant to the contrary notwithstanding**. This simply means you are responsible to see that no more is paid than is allowed, and, of course, you as treasurer have a right to question the legality of any disbursement you are ordered to make.—In connection with your general inquiry see—

Opinions of Attorney General, 1922-1924, p. 75.

Answering your **fifth** question will state that the sheriff and his chief deputy when duly and properly summoned as witnesses in criminal cases are entitled to his **per diem** as a **witness** just as other witnesses.

In this connection see extended opinion:

Opinions of Attorney General, 1920-1922, p. 449,
See also Opinions of Attorney General, 1928-1930, p. 522.

In order to properly summon the sheriff as a witness the subpoena must be served on him by the coroner.

Opinions of Attorney General, 1928-1930, p. 522, supra.

There is nothing in the statutes requiring them to appear **as prosecuting witnesses** unless duly and properly summoned.

Answering your **sixth** question will state that where a juryman or bailiff is subpoenaed as a witness in a criminal case, he is entitled to witness fees just as any other witness. There is no law prohibiting his compensation as a witness simply because he is already present in obedience to an order of court.

Answering your **seventh** question will state yes. There is no prohibition against it.

Answering your **eighth** question, I invite your attention to Sections 224, 225, 5680, and 6763, Code of Alabama, 1923, by reason of which and in the light of decisions of the courts my answer is in the affirmative. Until the minutes are properly executed **there is no record.**

Fountain v. State, 210 Ala. 51, 97 So. 59,
Boothe v. King, 71 Ala. 497,
Smith v. McCutchen, 146 Ala. 455, 41 So. 619.
Speed v. Cooke, 57 Ala. 209.
See also Crenshaw County v. Sikes, 113 Ala. 626, 21 So. 135.

The allowance of a claim must be matter of record. "A court of record speaks only through its records. A written memorial is the only evidence which other courts can receive of its proceedings, whether it is of the exercise of judicial power, or of mere ministerial authority and duty."

Speed v. Cooke, supra.

To like effect see Wade v. Odeneal, 14 N. C. 423. Unless there were a **record** you as treasurer could not know whether a warrant was in excess of the claim allowed.

Answering your **ninth** question, ignorance of the law is no excuse. The commissioners would be responsible for allowing the claim, the probate judge for issuing a warrant for it and the treasurer for honoring it.

Opinions of Attorney General, 1914-1916, p. 100, 101;
Opinions of Attorney General, 1920-1922, p. 341;
Section 100, Constitution;
Opinions of Attorney General, 1922-1924, p. 134;
Opinions of Attorney General, 1926-1928, p. 579.

Answering your **tenth** question, will say no.

Opinions of Attorney General, 1924-1926, p. 341;
Opinions of Attorney General, 1928-1930, p. 250, 251.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 23, 1931

Hon. McK. Lovett,
Tax Collector of Winston County,
Double Springs, Alabama.

Check is not payment of taxes until it is paid.

Opinion by the Attorney General.

Dear Sir:

I have your letter of March 18th in which you say you accepted a check for taxes for the year 1929. The check was not honored.

Unless the check was paid, the taxes were not paid. You should take the usual course to collect the taxes when the same have not been paid.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 23, 1931

Hon. W. H. Quillin,
Solicitor of Law & Equity Court,
Russellville, Alabama.

Guard fees—for guarding prisoners while confined in hospital.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of March 4, 1931, in which you state that a certain person in your County was engaged in a difficulty in which he was wounded. He escaped to a City in Mississippi and then went to a hospital for treatment. A warrant was sworn out for him for assault with intent to murder. Not being able to leave the hospital a guard was placed over him until he could be moved to Alabama for trial.

You request my opinion:

Is there any law whereby the State or County is required to pay for this guard?

I am unable to find any authority of law that would authorize the State or County to pay this bill for guarding prisoners while confined in a hospital in the State of Mississippi. All fees and costs are penal and must be strictly construed and unless there is some law or statute directing their payment they cannot be paid, and as stated above I am unable to find this.

Dent & McGruder, vs. State, 42 Ala. 514.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 24, 1931

Hon. D. E. Laslie,
Judge of Probate,
Tuskegee, Macon County, Ala.

Bonds—Guardians of persons entitled to benefit of War Risk Insurance.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of March 18, 1931, in which you state that the Bank of Tuskegee has, in several instances, been appointed guardian for war veterans under the War Risk Insurance Act.

You inquire as to whether or not the bond required of said bank under Section 8124, Code of Alabama, 1923, should be a depository or fiduciary bond.

I am of the opinion that the bond, required under Section 8124, Code of Alabama, 1923, is a fiduciary bond.

Guardians for persons entitled to the benefit of War Risk Insurance come under the provisions of Article 3 of Chapter 299, (Sections 8120-8134) Code om Alabama, 1923.

The bond required of such guardians is governed by Section 8134, Code of Alabama, 1923, which is as follows:

"8134. Bond, when required, amount of—Bond must be required in all cases in an amount proper and reasonable, but not less than the money due and to be due during a period of twelve months. Bond need not be required of a trust company, or bank authorized to act as a guardian or executor under the laws of this State."

Unless the bank, in the instant case, comes within the above exception, a fiduciary bond would be required of said bank the same as in the case of an individual guardian.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 24, 1931

Hon. John Brandon,
State Auditor,
CAPITOL.

Members of Legislature entitled to mileage after long recess.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of March 19th in which you state:

"On January 15, 1931, I issued Auditor's warrants in favor of all members of the Legislature covering mileage as set out in Section 1521, Code of 1923. The Legislature reconvenes on March 31, 1931. Please advise me whether or not I should issue warrants to members of the Legislature covering additional mileage upon their return."

In answer to your inquiry, I advise that you should.

Ex parte Matthews, 52 Ala. 51;
Ex parte Pickett, 24 Ala. 91.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 25, 1931

Hon. J. K. Thompson,
County Solicitor, Jackson County,
Scottsboro, Alabama.

Failure to work road—sickness at the time road was worked may be shown under plea of not guilty.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of March 3, 1931, in which you state that a party in your County was warned to work the roads; that he failed or refused to appear at the time warned to work. He offered no excuse. Later he was arrested for failing to work and now offers to produce doctor's certificate that he was sick and unable to work at the time.

You request my opinion:

Can this defense be offered now since he has been arrested?

It is my opinion that the defendant under the plea of not guilty would be permitted to show that at the time the road was being worked, he was unable, on account of sickness, to perform manual labor. This, however, I do not think can be done simply by a doctor's certificate, but in order to make this defense available, he would have to produce the doctor in court or other sufficient evidence to show that he, at the time, was unable to work. I call your attention to Section 194 of an Act approved August 23, 1927 (General Acts, 1927, page 400). This Section reads as follows:

"Failure to work Road after Legal Notice. Any person liable to road duty who wilfully fails or refuses, after legal notice, to work the public roads either in person or by substitution, without a sufficient excuse therefor, must, on conviction, be fined not less than three dollars nor more than ten dollars for each day for which he is so in default and may also be imprisoned in the county jail, or put to hard labor for the county, for not more than sixty days."

You note the above Section provides that he shall work unless he has sufficient excuse therefor. Certainly sickness would be a sufficient excuse if proven and the Court or jury believed the evidence. However, this like all other controverted questions, would be a matter for the Court or jury trying the case.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 25, 1931

Hon. Chas. C. Greer,
Superintendent of Insurance,
CAPITOL.

Superintendent of Insurance cannot prevent unauthorized companies from selling insurance by mail.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"My attention has been called to the fact that a number of unauthorized companies are soliciting insurance in this State by advertising in newspapers in this State, and by advertising over radios in this State. You will readily see by reading the attached advertisements that policy conditions are grossly misrepresented.

"If citizens of this State buy insurance in unauthorized companies and there should arise a contest over a claim I am informed that any litigation regarding the claim would have to be carried on in the State where the company's home office is located. This, of course, would be expensive and impractical."

You ask my opinion on the following questions:

1. Does this Department have the legal right to prevent an unauthorized company from selling insurance by mail in this State?

2nd. Does this department have the legal right to prevent unauthorized companies from advertising in this State?

3rd. Does this Department have the legal right to prevent unauthorized companies from advertising insurance over the radio and selling insurance indirectly that way?

4th. Would this Department have the legal right to write articles which might be published in the leading newspapers warning prospective purchasers of such advertised insurance against buying, giving the reasons why they should not buy?

I do not think your Department can prevent an unauthorized company from selling insurance by mail.

In answer to your second question I do not think your Department has a legal right to prevent an unauthorizezd company from advertising in this State unless the advertising is such as to be denounced by Section 4593 of the Code of Alabama 1923.

Answering your third question I do not think that your Department has a legal right to prevent unauthorized companies from advertising insurance over the radio unless such advertising constitutes active solicitation and the party so advertising by his statement or otherwise constitutes himself an agent of the company. This would be a matter of fact which would be determined in the particular case.

Answering your fourth question I think that your Department clearly has a legal right to publish articles in the newspapers warning prospective purchasers of such advertised insurance against buying such insurance and giving the reasons why. Such articles of course would be in general terms unless you had specific information that some particular company was bankrupt, insolvent or otherwise attempting to perpetrate a fraud.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 25, 1931

Senator John Craft,
Mobile, Alabama.

Highways—Power of State Highway Commission to rescind ruling of previous Commission designating a certain highway as part of the highway system of Alabama.

Opinion by Assistant Attorney General McCall.

Dear Senator:

I have your communication of recent date quoting resolution of the Alabama Highway Commission of October 21, 1930, as follows:

"Mr. Turner made a motion which was seconded by Mr. Scott that the road in Mobile County leaving the Old Spanish Trail at Grand Bay running in a southeasterly direction to a point about two miles north of Bayou Labatre, then following the Irvington-Bayou Labatre Road through Bayou Labatre, Coden to Alabama Port to the Cedar Point Road, then following the Cedar Point Road to Mobile, be and the same is hereby designated a part of the State Highway System of Alabama, provided Mobile County completes the pavement of the Cedar Point Road its entire length and also the road from Alabama Port to Coden. Motion carried."

You request my opinion:

Is this resolution binding on the present Commission?

I know of no statute of the State making the resolution with regard to this particular road binding on the present Commission.

By Section 1391, Code of Alabama, 1923 certain state trunk roads are established and among these is a road from Mobile to Grand Bay, thence to Coden and Alabama Port. (Road No. 1).

Other trunk roads are established by Section 1393 and 1397 also Act 1927, pp. 494, 628. By Section 1397 it is provided that nothing in Section 1391 shall interfere with or abolish any other state trunk road established prior to September 17, 1919.

By Act 1927, pp. 349, 350, the Highway Commission is required to "designate the roads to be constructed, repaired and maintained * * *." See also Act 1927, pp. 355, 356.

By Act 1927, p. 360, it is provided the department has **full** authority to make such changes or additions to the **system** of **State trunk** roads to **conform** to the requirements of the Federal Aid Law, as it may deem proper, etc.

By Act 1927, p. 361, the good faith of the State is pledged to make available funds sufficient to equal the sum apportioned to the State and **maintain** the roads constructed under the Federal Aid Law.

The law on the subject of the highways and highway system of Alabama in the particular you mention is rather vague and indefinite—I might say unprotective—but in all of it I can find nothing which either directly or by inference prevents the rescinding of the resolution you mention.

Of course I am not considering the question of any contract made and executed with this resolution or a part thereof.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 28, 1931

Hon. Roy Star,
Chairman, Board of Review,
Heflin, Cleburne County, Alabama.

The method of obtaining information for fixing the assessable value of real and personal property provided by Section 34 of Act No. 172, Acts 1923, p. 173.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Receipt of your letter of March 20th, 1931, is acknowledged.

You state that you are desirous of knowing if you, as Chairman of Board of Review of Cleburne County, or the Board of Review of Cleburne County while in session, have the right to go out from the county seat to obtain evidence of the value of lands, that you think the assessment value of which, placed by the Tax Assessor, is too low.

In reply will say that the method of fixing the assessable value of real or personal property by the Board of Review is provided by Section 34 of Act No. 172, Acts 1923, page 173.

This Section reads as follows:

"Section 34. For the purpose of assessment, real and personal property shall be estimated at its fair market value, according to the best judgment the assessor and the Board of Review can form upon information, inspection and otherwise, taking into consideration, if real estate, its location, whether in town, city or county, and whether

it is vacant, or is occupied or in use, and if occupied and in use, the rent derived therefrom, its proximity to local advantages, its quality of soil, growth of timber, mines, minerals or coal beds, and the amount and character of the improvements thereon; and mineral and timber interests when they have been severed in ownership from the soil, by sale or otherwise, shall be separately assessed."

This section is written about as clearly as the matter is capable of being written, and, in my opinion, means what it says. It clearly provides that either the Tax Assessor or Board of Review may inspect property, receive information, or get any other evidence of value to assist such Board of Review in reaching a proper value for assessment of any property.

This section, practically, should remove all timidity as to the manner to be used by, either the Tax Assessor, or the Board of Review, in ascertaining the taxable value of real or personal property; except that the tax payer has a right to make objection to the valuation tentatively fixed; to be heard and to present evidence of such value, in addition to all the evidence or information otherwise obtained by the Board of Review, as provided by law, before the final fixing of value by the Board of Review.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 30, 1931

Hon. Homer R. Dudley,
Judge of Probate,
Girard, Russell County, Ala.

Motor vehicles—Owned and used by United States Government.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of March 21, 1931, in which you inquire as to whether or not a case can be made against a Federal Prohibition Officer, who operates a Government owned automobile in his official capacity upon the highways of Alabama, with a 1930 B Class license plate on a Ford Roadster.

I am of the opinion that your question should be answered in the negative. Of course, I am assuming that said license tag is being used by the person to whom it was legally issued or legally transferred.

Automobiles and trucks owned by the United States Government, and used in its governmental capacity, anywhere within the State of Alabama, are not required to carry State motor vehicle license tags.

Biennial Report of Attorney General 1928-1930, p. 369.

I would suggest that in the instant case a proper tag of governmental identification be put on said automobile.

Furthermore, although it is objectionable if a person used upon a motor vehicle in this State a license tag smaller than is required by the manufacturer's rated capacity, yet he may use a license tag greater than that required by law.

Biennial Report of Attorney General, 1928-1930, p. 54.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 30, 1931

Hon. H. H. Stewart,
Assistant Director,
State Board of Administration,
CAPITOL.

Costs—Felony cases—On conviction—Payments from Convict Fund.

Opinion by Assistant Attorney General McCall.

Dear Sir:

This acknowledges receipt of your letter of March 21, 1931.

You state that in many instances claims for fees are made against the convict fund for issuing and serving two or three times as many subpoenas as there are names of witnesses in the cost bill presented to the convict bureau for payment and that clerks, in some instances, claim this is done on the order of the court. You refer to Section 3667, Code of Alabama, 1923 and the decision of the appellate court in O'Rear, Treas. v. Long, Clerk, 186 Ala. 597. Then you request my opinion:

1st. Under the provisions of Section 3667, Code of Ala., 1923, may a Circuit Clerk claim fees for issuing subpoenas for witnesses to appear before a grand jury?

2nd. Are Circuit Clerks and Sheriffs entitled to claim fees from any fund for issuing and serving alias supoenas where criminal cases are continued from term to term of the trial court?

In answer to your first question will state that where a grand jury subpoena is issued by the Circuit Clerk **pursuant to the provisions** of sec-

tion 8676, Code of Alabama and the witness appears and the grand jury returns an indictment against the party concerning whom he was subpoenaed to testify and that party is thereafter tried, convicted and sentenced to the State penitentiary, the circuit clerk is authorized to claim as an item of cost payable from the convict fund under Section 3667, Code of Alabama., 1923, the sum of twenty-five cents for issuing the subpoena to such "state witness."

It must be remembered however that under the law of the State the clerk must so itemize his claim that the State authorities may make an intelligent examination and that it is **mandatory** that the names of all persons subpoenaed and served as state witnesses concerning whom a claim or claims are made on the convict fund must be entered on the cost bill presented to the State.

Opinions Attorney General, 1920-22, p. 348.

Furthermore, since it is the common custom for the Solicitor of the Foreman, and not the Clerk, to issue all subpoenas for witnesses before the grand jury and under Section 8676, supra, only on "application of the grand jury" may the clerk do so, it is my opinion that where, in a cost bill, the clerk claims a fee for issuing such a subpoena, he should present with such claim a written statement signed by the Foreman of the grand jury and duly sworn to, evidencing clearly that such clerk, at the time be issued, such subpoena, was requested to do so, or else the convict bureau should disallow the claim.

Answering your second question will say no.

Section 5619, 5620, 5621, Code of Ala. 1923, O'Rear v. Long, 186 Ala. 599; 65 So. 134.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 31, 1931

Hon. George W. Miller,
Clerk of the Circuit Court,
Rockford, Coosa County, Alabama.

Fine and Forfeiture Fund—where one is acquitted on a special plea the cost to be paid out of the Fine and Forfeiture Fund.

Opinion by the Attorney General.

Dear Sir:

This is to acknowledge the receipt of your letter of March 30th. You inquire whether or not where any one is acquitted by a jury on special

plea of "not guilty by reason of insanity" the costs in such cases are payable out of the fine and forfeiture fund.

Such costs are to be paid out of the fine and forfeiture fund as provided by General Acts of 1927, p. 45, amending Section 4039 of the Code of Alabama, 1923.

This Act of the Legislature amending the above referred to Section of the Code does not contemplate the character of the pleadings, but only has reference to whether or not the defendant was convicted and where he is not convicted, it is one of the instances where the fees of the officers must be paid out of the fine and forfeiture fund.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 31, 1931

Hon. H. B. Radney,
Tax Collector,
Wedowee, Randolph County Alabama.

Tax Collectors are not liable for ad valorem taxes when they have accepted checks in payment of said taxes and the checks have by the bank upon which they were drawn, not been paid.

Opinion by the Attorney General.

Dear Sir:

I have your letters together with letters from Mr. Vann and Mr. Perry, setting out the facts relative to your acceptance of checks in payment of taxes drawn on the bank, which prior to the payment of the taxes, became insolvent.

You inquire whether or not you are liable to the State in the amount of the taxes for which you accepted checks, on account of the non payment of same.

I am of the opinion that you are not liable on your official bond or personally for the taxes so paid, provided that you have not prejudiced the State's right to collect these taxes by accepting a check in payment therefor. You are the proper officer to institute all proceedings that the State may institute as a remedy for the collection of taxes. These checks not having been paid, the taxes have not been paid.

Keenes v. District of Columbia, 54 Am. Rep. 500.

A check is not payment of such an obligation until it is honored and paid by the bank upon which it is drawn.

City of Enterprise v. Rawls, 56 So. 374,
Stanley v. Green, 87 So. 356.

The State has lost none of its rights by reason of its acceptance of these checks, and the State may proceed to enforce the payment of the taxes as though the checks had not been given. You would be without authority to bind the State by the acceptance of checks in such cases.

City of Enterprise v. Rawls, supra.
Weddingdon v. Boston Elastic Fabric Co., 100 Mass. 442.

Since you are the proper officer to institute such proceedings as may be necessary for the collection of money due for taxes, this is to advise you that your course is to proceed as though the checks had never been tendered.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 31, 1931

Dr. J. N. Baker,
State Health Officer,
State Capitol,
Montgomery, Alabama.

Health—Vaccination of children of compulsory school attendance age.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of March 20th, 1931, relative to requiring school children of compulsory attendance age to be vaccinated.

I am of the opinion that under the proper rules and regulations, children of compulsory school attendance age may be vaccinated.

The State and County Boards of Health, and the State and County Boards of Education have the authority to promulgate rules and regulations relative to the vaccination of school children.

Opinions Attorney General, 1922-1924, p. 29.
Opinions Attorney General, 1928-1930, p. 197.

Vaccination may be made a prerequisite to attending school, or condition precedent to remaining in school.

While there is no legal method of physically forcing one to submit to vaccination, yet punishment may be imposed for the failure to do so.

Opinions Attorney General, 1922-1924, p. 29,
Commonwealth v. Jacobson, 183 Mass, 242.

Although compulsory attendance is required of children of school age, yet, in my opinion, proper health regulations would predominate over the school attendance requirements. The former insures to the benefit of the community as a whole, while the latter is for only the benefit of the individual. In such instances the welfare of the public generally should receive primary consideration.

I wish to call your attention to Section 1093, Code of Alabama, 1923, relative to a means of enforcing the rules and regulations as to vaccination.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 1, 1931

Hon. S. P. Dunn,
Judge of Probate,
Evergreen, Conecuh County, Ala.

License on small musical instruments.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of March 25, in which you state as follows:

"Please advise me whether or not a dealer having a permanent place of business in Alabama and carrying as part of his stock small musical instruments such as violins, banjos, guitars, harmonicas, etc., would be subject to a license under schedule 3, 4 or 139 Revenue Code of 1927?"

In answer thereto I presume that you refer to the Compilation of Revenue Laws of 1929 as the schedule numbers 3, 4 and 139 apply to the subject matter and there is no Revenue Code of 1927 other than the Revenue Act of the Legislature, which is incorporated in the Compilation of 1929.

As I understand the facts from your letter, this dealer carries only the small musical instruments enumerated in your letter and deals in no other form of musical instruments. The license for such instruments is to be found in the Act of the Legislature of Alabama, Special Session 1920, p. 139. This supersedes the 1919 Act, which appears as Schedule 139 of the Revenue Compilation of 1929. The pertinent part of the Act of 1930 is as follows:

> "The provisions of this schedule shall not apply to persons selling as a part of their stock in trade Jews harps, harmonicas, banjoes, mandolins, guitars, violins, toy phonographs and toy victrolas, the selling price of which does not exceed $10.00. Provided that the license tax on Jews harps, harmonicas, banjos, ukeleles, mandolins, guitars, violins, toy phonographs and toy victrolas, the selling price of which exceeds $10.00, shall be as follows:—In counties having a population of 25,000 or less, ten dollars; in counties having a population exceeding 25,000 but not exceeding 35,000 fifteen dollars; in counties exceeding 35,000 but not exceeding 50,000 twenty-five dollars; counties exceeding 50,000 but not exceeding 75,000 fifty dollars; in counties exceeding 75,000 one hundred dollars. This shall not be construed to entitle a licensee to maintain branch establishments or stores without payment of regular license for each branch or store both state and county, required under this schedule."

It would therefore appear that if the selling price of these articles does not exceed ten dollars and they are carried as a part of a general stock of goods, no license is required. If however, the selling price of the articles, or any of them, exceeds ten dollars, the dealer shall pay a license according to the schedule hereinabove quoted.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 1, 1931

Hon. H. H. Montgomery,
Superintendent of Banks,
CAPITOL.

Banks and banking—Definition of the term "Bank."

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of March 27, 1931, in which you state the following facts:

"A certain Jeweler has been allowing some of his customers to deposit money with him week by week, which can be used by the person purchasing jewelry during Christmas week. He gives the customer a pass book and allows interest until withdrawn. The money is not withdrawable in cash unless the customer removes from the city, in which event the cash may be withdrawn in full."

You inquire as to whether or not this concern is doing a banking business within the contemplation of the laws of this State.

I am of the opinion the question should be answered in the negative.

While the term "bank" has received a number of definitions differing considerably in language, but all expressing of course the same fundamental ideas, and the sense in which it is intended to be used is largely determined by its connection with other language, perhaps the most concise and at the same time complete definition to be found in the books is that a bank is "an association or corporation whose business it is to receive money on deposit, cash checks or drafts, discount commercial paper, make loans, and issue promissory notes."

7 Corpus Juris, 473.

Speaking generally a "bank" is a moneyed institution to facilitate the borrowing, lending and caring for money .

Kansas City Title & Trust Co. (Mo) 41 S. Gt. 243,
255 U. S. 186, 65 L. Ed. 577.

There is a distinction between doing a banking business and the performance of isolated acts of which the business consists and therefore a corporation which is denied the right to exercise banking powers may nevertheless, in the regular transaction of its affairs, do some things which constitute the business of banking.

3 Ruling Case Law 376, Ohio Life Insurance Trust Co. vs. Merchants Insurance Co. 11 Humph. (Tenn.) 1, 53 Am. Dec. 742.

In view of the above, it is my opinion that the functions exercised by the concern in the instant case would not bring said concern within the legal definition of a bank.

Said concern merely receives advance payment for the benefit of its customers and said accounts are not withdrawable at any time by check or order. A deposit can be withdrawn in cash only when the customer removes from the city. As stated above, these facts alone would not place said concern under the supervision of the State Banking Department.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 2, 1931

Hon. Wm. F. Feagin, Director,
State Board of Administration,
CAPITOL.

Convict condemned to death may, upon appropriate order from presiding judge of circuit court, be used as a witness in a criminal case.

Opinion by the Attorney General.

Dear Sir:

This is to acknowledge the receipt of your letter of April 1st.

You inquire whether or not you have authority to move a prisoner condemned to death, to the scene of the trial of a criminal case to give testimony therein. I assume the appropriate order of the presiding judge of the circuit court has been served upon you.

I am of the opinion that you must comply with this order.

Section 3657, Code of 1923, provides inter alia that where the presiding judge of any circuit has reason to believe that the testimony of any convict is necessary in any criminal prosecution for the State, that such judge may order the Director of the Board of Administration to have such convict before the court on a day certain, to give testimony in the particular case, for the State. I am not unmindful of the wording of Section 3657. This Section provides that any convict "serving a sentence in the penitentiary," may be so removed from the penitentiary.

It may be that the question of your authority to send such convict to the scene of the trial for the purposes mentioned, has arisen, in view of a construction of Section 3657, as this is the only section of the Code which furnishes you authority to send a convict to the scene of a trial as a witness in a criminal case. Probably, under the present circumstances, the question has arisen in your mind whether one condemned to death, is serving a sentence in the penitentiary, or whether he is merely confined there awaiting the execution of the sentence of death.

Section 3657 of the Code of 1923 was adopted by the Legislature as a section in the Code at the same time the sections which provide for the electrocution of convicts and their incarceration in the penitentiary pending their execution.

In my opinion, a convict sentenced to death, is sentenced to the penitentiary the same as though he has been convicted of a non-capital felony. The fact that ultimately he may be executed does not conclusively indicate that he is sentenced to the penitentiary.

Whenever any person is sentenced to death, the clerk of the court

in which the sentence is pronounced shall within ten days after the sentence has been pronounced, issue a warrant under the seal of the court for the execution of the death sentence * * * * * * directed to the warden of Kilby Prison. Such warrant shall be directed to the sheriff of the county and shall by him be delivered to the warden at Kilby Prison, together with the condemned person.

Section 5311, Code of 1923.

Immediately upon the receipt of the warrant, the sheriff shall transport the condemned person to Kilby Prison and shall deliver him and the warrant into the hands of the warden. The condemned person becomes as much a prisoner of the warden of Kilby Prison as any other, and by operation of law, there is written into his sentence, the provisions of the last before mentioned statutes. It matters not the length of time that he must serve as an inmate of the Prison and it matters not for what purpose he is serving as an inmate of Kilby Prison. In short, I am of the opinion that one awaiting the execution of the sentence of death, is serving a sentence in the penitentiary within the meaning of the provision of Section 3657 of the Code of 1923.

It could not have been the intention of the Legislature to deny the State the right to examine, as a witness for the State, one who is under sentence of death. There can be no provision of law for taking the deposition of such a convict, in view of the fact that, under our Constitution, in all criminal prosecutions, the accused has a right to be confronted by the witnesses against him. Furthermore, the accused, in criminal proceedings, has a right to have compulsory process of obtaining the witnesses in his favor who are within the jurisdiction of the court before which he is being tried.

Section 6, Constitution of 1901.

I am of the opinion that not only may the State avail itself of the testimony of one condemned to death in the manner provided by Section 3657 of the Code, but also the defendant has an equal right, under the Constitution, to have any living person within the jurisdiction of the court, appear as a witness and give testimony in the case.

In my opinion, Section 3657 does not regard the character of the sentence imposed upon a convict. One condemned to die is a convict just as any other person convicted of an offense. Section 3657 undoubtedly contemplates the removal of convicts for the purposes mentioned in said section, who are in the custody of the Director of the Board of Administration and incarcerated in Kilby Prison or other prisons under his control.

I hope the above expression furnishes you the desired information.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 2, 1931

Hon. J. K. Thompson,
County Solicitor, Jackson County,
Scottsboro, Alabama.

License to sell bankrupt stock.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"A local merchant was thrown into bankruptcy and his stock of merchandise advertised for sale at Scottsboro and sold at public sale at the store on about the 12th, or 13th, of March, and bought in by a party residing in DeKalb County, Alabama, and immediately after the sale the purchaser opened the store and began to sell the bankrupt stock at greatly reduced prices. So far as I know and can learn, there was no newspaper advertisement or poster advertisement of the retail sale of the bankrupt stock, but the word went out by word of mouth that the entire stock was being sold out as a bankrupt stock and at bankrupt prices and since that time the store has been continuously open and sales going on, and the business has been apparently very good * * *."

Schedule 31 of the Act approved September 15, 1919, General Acts, 1919, page 411, provides for a license on sales advertised as bankrupt, insolvent, etc. As I interpret this Schedule, the sale must be advertised under one of the categories therein enumerated in order to make the same subject to the license provided for in the Schedule. The statute does not attempt to define the word "advertising" and in my opinion if the sale is "advertised" by word of mouth and such advertising is by the party making the sale that would constitute advertising the same as if such advertisement had been by poster or in the newspapers. The question of proof of course would be involved. But if the facts can be clearly proved, I think such advertising would be within the statute. For your information I call your attention to the following opinions rendered by this office:

Biennial Report of Attorney General, 1926-1928, p. 39,
Biennial Report of Attorney General, 1926-1928, p. 65;
Biennial Report of Attorney General, 1926-1928, p. 400;
Biennial Report of Attorney General, 1926-1928, p. 662;
Biennial Report of Attorney General, 1928-1930, p. 784.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 2, 1931

Hon. George E. Stone,
Treasurer, Mobile County,
Mobile, Alabama.

1. Gasoline funds are to be used only in payment of current maintenance expenses.

2. Treasurer may set up special gasoline fund.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of March 9, 1931, in which you state:

"This office is confronted with two apparently conflicting laws. (First) The general law provides that it is the duty of the treasurer to register claims in the order in which they are presented, and to pay them, of course, in that order, when funds are available; and claims against special funds must follow the same course.

"Nearly all of our road expenses are payable from the Road and Bridge Tax of 2½ mills, levied under Constitutional Section 215, and Code Section 213. This of course is to apply to maintenance, construction, machinery, etc., and when collected by the Tax Collector is deposited in the Road and Bridge Fund. During the last two years, the former Board of County Commissioners issued warrants largely in excess of the cash received from the Tax Collected, so warrants had to be filed for future payment; and I am redeeming these warrants as fast as cash becomes available. Please remember that some claims are for maintenance, some for construction, etc., and that some of these warrants will be outstanding a year or more before they can be redeemed.

"(Second) Each month the County receives the gas tax money from the State Highway Department, amounting to about $4000.00 per month, and it can be applied only to **maintenance.** Under the ruling of Hon. Charlie C. McCall, as I understand it, this money can be applied only to maintenance, and only to maintenance claims which accrue after the money comes into the County Treasurer's hands, and can not be applied to claims allowed at a previous time.

"The Treasurer cannot lawfully pay claims for road maintenance service, accruing say, in January, until he has first paid the road claims accruing in December. Consequently the money from the gasoline tax is on deposit, and I cannot use it without violating the general state law. It is further complicated by the fact that our monthly maintenance claims will easily amount to from $15,000.00 to $18,000.00 per month, which cannot all be paid with the $4000.00 received from

the gas tax. And this balance of claims each month is certainly entitled to payment before I pay claims filed in the month following."

You ask my opinion on the manner in which these two laws should be administered.

In reply I beg to advise you as follows:

There is no question in my mind that funds payable to counties which are derived from the gasoline tax as distributed by the State among the sixty-seven counties, can be used only for the current maintenance of county roads and not in payment of debts created prior to their receipt. This has been repeatedly decided by this office.

Opinions of Attorney General, 1928-1930, pp. 412, 467, 638, 674, 675, 857.

Under the plain mandate of the statute, these opinions appear to me to be not only sound but the statute admits of no other construction.

It was well said in the opinion appearing on page 412, supra:

"That it was the legislative intent to provide a fund which would be constantly coming to the county and available for current maintenance and repair of roads. It was not intended that such taxes should or could, be pledged in advance for the giving of credit, or be used, at any time, for the payment of anything other than current expenses for maintenance and repair of roads, highways and bridges of said county."

This statute was first passed in 1923 and amended in 1927 and the present Act appears as Section 9 of Act No. 340, approved August 27, 1927, (Acts 1927, pages 328 and 329).

Section 303 of the Code of 1923 relates to the registration of claims against the County. If this Section is in conflict or renders inoperative, so far as gasoline funds are concerned, the gasoline Act of 1927, then the latter statute must prevail. However, if the two can be harmonized, they should be and in my opinion they can.

The intention of the gasoline act is to create a fund out of which immediate or cash payments may be made for current expenditures for maintenance and repair of roads and bridges. This contemplates, in my judgment, the setting up by the Treasurer of a special gasoline fund to pay claims drawn on it specifically. It would seem that each warrant issued for current maintenance expenses which are payable out of the gasoline fund should be so endorsed and should have the further endorsement that the same was issued in payment for work, material, or services, for current maintenance.

Subsection 3 of Section 303 of the Code of 1923, among the duties of the County Treasurer, is as follows:

> "3. To keep in well bound books separate registers of claims presented against the general fund, **the special fund if any,** and the fine and forfeiture fund."

Subsection 4 of Section 303 is as follows:

> "4. To number and register, in the order in which they are presented, all claims against the general fund which have been audited and allowed by the court of county commissioners as claims against such fund, such register showing the number of the claim, the date presented for registration, to whom allowed, when allowed, the character of the claim and the amount thereof; and, except as otherwise provided by law, to pay the same in the order of their registration. He must in like manner number, **register, and pay all claims allowed against a fund raised for a special purpose.**"

These Sections seem ample authority for the Treasurer to set up a special gasoline fund, under the Act above referred to and to register or pay current claims for maintenance against it. These warrants can be paid only to the amount received at the beginning of the month, and as soon as current maintenance claims to the amount received have been registered or paid then any other claims for maintenance and repair of roads and bridges will have to be registered against the general road and bridge fund and take the regular order of payment thereunder.

Undoubtedly, this system may be cumbersome and it seems an injustice that a claim registered perhaps several months ago for a maintenance claim, cannot be paid, while a warrant for an immediate expenditure can be paid. This, however, seems to be the law. The gasoline fund is in the nature of an emergency fund and the duty, I think devolves on the Court of County Commissioners or Board of Revenue to decide what current maintenance claims shall be paid therefrom, providing the total to be paid is not greater than the amount which they have received. This can be done by the minutes of the Commissioners Court showing at the time the claim was audited that the claim was (1) for maintenance of roads and bridges, (2) that the indebtedness for which the warrant was issued is current, that is, was incurred the same month the money was received, (3) that the warrant in payment of same is drawn on the special gasoline fund and the warrant shall be so endorsed.

This naturally will require a close check between the Commissioners Court and the Treasurer as to the balance in the special gasoline fund so that warrants will not be issued in excess of funds in his hands to the credit of the special gasoline fund. If these suggestions are followed I believe that your difficulties will be greatly lessened.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 3, 1931

Hon. J. Alex Moore,
County Superintendent of Education,
Jasper, Walker County.

County Board of Education—Borrowing money for teachers' salaries. Using State Warrants as part security for loans. Payment of interest.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of March 30, 1931. In it you state that warrants are being issued by the State Auditor for public school funds and on each warrant is the following statement:

"The Governor directs that this warrant not be presented to the State Treasurer until and when the State Superintendent of Education shall advise the payee that the State Treasury is ready to pay."

You further state that you have been able to use these warrants to secure funds for the payment of teachers' salaries of Walker County, provided the legal phase of the question can be properly cleared up.

You request my opinion:

1st. Has the County Board of Education authority to sign notes and use these warrants as a collateral for their payment?

2nd. Has the County Board of Education authority for paying interest out of county school funds on these warrants?

Answering your first question will say, yes on compliance with other provisions of Section 136, Alabama School Code, 1927.

Answering your second question, will say yes.

The County Board of Education is a creature of statute and possesses only such powers as are conferred upon it by statute. Its power to expend public funds under its control, the manner of such expenditures and the purposes must appear in the statutes either expressly or by necessary implication. Its executive officer and secretary is the County Superintendent of Education. Its custodian of public school monies is the County Treasurer of School Funds. The authority of its executive officer to order issuance of warrants against its funds must first definitely appear in its written, approved minutes. It is a governmental agency—a quasi-corporation which may sue or be sued and is possessed of broad powers. The State appropriations of the schools of the county and all county local school tax revenues are under its control, subject in expenditure to the constitution and laws enacted pursuant thereto.

Under Section 130, Alabama School Code, 1927, it has authority, **upon the recommendation of the County Superintendent of Education:**

> "To borrow money on the credit of the **School Fund** of the county to meet salaries of teachers and current expenses **when** the current funds on hand are not sufficient to meet the same, **to be secured** by a pledge of the current revenues of the year.

and further—

> "It shall be the duty of the County Board of Education and the County Superintendent of Education to secure such a loan, if practicable, **when** the current funds on hand are not sufficient to **promptly** pay **the teachers' salaries.**"

also this section provides:

> "All such loans, **except such as are based** on county and district local tax proceeds, shall be paid **within** the school year **in which** such current loans are made, **and from** the funds **accruing** for the support of the schools **within** such given school year. The amount so borrowed shall at no time exceed one-third of the sum **paid out** for current **expenses during** the **preceding year.**"

The foregoing section of the School Code has been construed by the Supreme Court of Alabama.

> "The School fund of the county" includes the proceeds of a State three mill tax and appropriations of the Legislature pursuant to Section 260 of the Constitution of 1901. The Constitution fixes the apportionment of this fund among the counties (Section 256) and puts a limitation upon the use of this fund (Section 261).
>
> "By Amendment to the Constitution any county may, upon approval of a vote of the qualified electors therein, levy a special three-mill county tax. Const. Art. 19, Sec. 1. (Amend. 3). The funds arising from this tax shall be 'apportioned and expended as the law directs,' Section 3.
>
> "When a county has voted and levied the three-mill tax, any school district therein may, by popular vote, levy a special district school tax, not exceeding three mills, to be expended exclusively for the benefit of the district 'as the law may direct,' Sections 2 and 3.
>
> "Section 104 (now Section 130) of the School Code is to be construed in the light of these constitutional provisions. It is a grant of power, defines the extent and limits of such powers, and must be construed as a whole to ascertain its intent.

"The term 'pledge' in the statute is, of course, not used in the usual sense of a deposit or bailment as security for debt. It means set apart, appropriated, or charged with the payment of a specific obligation authorized by law. In such sense funds to accrue in future may be, and continually are, pledged by counties, cities and other governmental agencies, to secure bonds, warrants or other obligations. That the pledge may, by appropriate remedy, require such revenues conserved and applied to the secured demand, and may even compel the levy of a tax when so authorized and required, needs no citation of authority.

"The section as a whole shows a purpose to empower the board of education to borrow money and provide a basis of credit therefor, viz: a pledge of revenues—the only source of payment. A loan based on county * * * local proceeds can mean nothing but 'based on credit' of such revenue. That credit is made available by a pledge of same.

"The wisdom of expediency of conferring power to draw on future revenues is a legislative and not a judicial question. That such power is liable to abuse by an improvident board evidently suggested the limit of the aggregate of outstanding loans fixed in the final sentence of Section 104 (130)."

Here, therefore, it will be seen, under the facts stated in this case, the court held the county board of education having exhausted the public school funds for the school year beginning October 1, 1924 and ending September 30, 1925, could borrow money for the purpose of paying salaries of teachers and current expenses for the then current school year, and as security for such loan pledge the revenues accruing from the **special county three mill school tax levied and assessed for the year beginning October 1, 1924, and to be collected and become available on and after October 1, 1925.**

Heustess v. Hearin, et. al. 104, So. 273.

The decision was rendered before the appropriation Acts of 1927, and the "School Fund of the County" now includes many additional appropriations apportioned under special rules.

No mention was made of the county one mill tax which is used exclusively to lengthen the terms of the schools. This might also be included in the definition.

Neither was anything said concerning the Bonus Fund, which likewise is included.

The right to borrow carried with it, of necessity the right to pay interest on the loan.

Your right to borrow money for teachers' salaries is limited to the provisions of Section 130, School Code, supra.

The quoted statement appearing on the State Warrant, is not binding on the payee and no more than a request, having no rightful place on such an instrument, since only the law can direct when and how a State warrant shall be presented for payment, and the law has not clothed any offices of State government with authority to make such an entry on such a paper. The State Auditor is required to issue warrants and not promulgate rules. The State Treasurer is required to pay out public monies only on warrants of the Auditor under legal appropriations from funds not otherwise appropriated. He does not direct the number, time and amount of warrants the State Auditor draws but only pays or refuses payment of those drawn, according to what are the requirements of the law in the particular case and the condition of the State Treasury as to the particular fund against which the warrant is drawn. If the money is not on hand he cannot and should not honor it until such money is available therefor. He knows or should know the condition of each fund of the State at all times, and he, of all officials, is presumed to know whether or not the cash on hand and the condition of the Treasury at a given date justifies presentation of such a claim against it. The quoted statement appearing on State warrants being without authority of law, has no binding force, is invalid and the warrant is in no wise affected thereby. Therefore, if the County Board of Education on the recommendation of its executive officer, desires to borrow money on the credit of that part of the "School Fund of the County" derived from **other than** county and district local tax proceeds and offer as collateral or security the State warrants you mention **in addition** to pledging any other revenues from such source or sources not devoted by law exclusively to other than the character of expenses mentioned in the statute, it may do so to the extent provided by that statute, provided that when loans are based on other than county and district local tax proceeds they must be paid "**within** the school year in which such loans are made, and from the funds **accruing** for the support of the schools within such given school year." (Section 130, School Code). The loans may be evidenced by notes. It is purely up to the lender as to whether he will accept the State warrant as part collateral.

The revenues being "pledged" to the payment of the loan are pledged to the payment of it both principal and interest. The special county three mill tax being in its expenditure left to the irrevisable discretion of the county board, whose action in that regard is not impeachable "except for fraud or clearest illegality," and the Bonus Fund being obligated to no particular use but whatever in the Board's opinion will best promote the cause of education in the county, it follows that the County Board when obtaining a loan under said Section 130, using a State warrant as part collateral or security therefor, may, when the interest on same is due, pay it out of these funds.

Opinions of Attorney General 124-26, pp. 136, 161,
Opinions of Attorney General 1926-28, pp. 176, 177, 178,
See also Opinions of Attorney General 1928-30, pp. 539, 664, 667.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 4, 1931

Hon. A. F. Harman,
State Superintendent of Education,
Montgomery, Alabama

In the event the County Board of Education is not successful in negotiating a satisfactory loan, the Treasurer of School funds may issue due bills to teachers as evidence of the amount due them.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Receipt of your letter of April 2nd is acknowledged. You state in your letter of April 2nd to the County Board of Education on the subject of funds for the payment of teachers' pay rolls, that as an alternative, in the event the Board is not successful in negotiating a satisfactory loan, the Treasurer of School Funds may issue due bills to the teachers on pay rolls duly signed by the County Superintendent of Education and approved by the President of the Board, the same to be redeemed by legal check payable to the teacher when the Auditor's warrants against which these due bills are drawn shall have been paid by the State Treasurer.

You ask my opinion as to whether such a course is legally permissible.

In reply will say that in my opinion such a course is entirely legal in the event there is no cash on hand to meet the pay roll at the time the same is due. This in fact is, in my opinion, the best that could be done under the circumstances in behalf of the teachers.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 9, 1931

Hon. B. L. Balch,
County Superintendent of Education,
Fayette, Fayette County, Alabama.

County Superintendent of Education may borrow one-third of the amount of the current expenses of the preceding year.

Opinion by the Attorney General.

Dear Sir:

This is to acknowledge the receipt of your letter of April 7th.

You request me to interpret Section 130 of the School Code of 1927, relative to the provision that the County Board of Education shall have authority to borrow money and pledge the current revenue of the year for the purpose of paying the current expenses.

I am of the opinion that the current revenue of the year may be pledged for the purposes provided in the Act and am further of the opinion that the current revenue as used in this provision of the School Code was used to mean all revenue whether accruing from State, County or District sources not heretofore pledged.

It is clear from this provision of the School Code that the amount which may be borrowed is limited to one-third of the amount paid out for current expenses during the preceding year.

I hope the above expression furnishes you the desired information.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 19, 1931

The State Tax Commission,
CAPITOL.

Act exempting World War and Spanish-American War Veterans, construed.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter relative to Act No. 117 approved March 9, 1931, (S. 40 Hubbard) entitled:

"An Act—To exempt Disabled Veterans of the World War and Spanish-American War from the payment of occupational taxes in the State of Alabama and to provide the manner in which such exemption shall be allowed."

You ask my opinion on the following:

"(1) A disabled veteran and a person not disabled form a partnership. The Act provides that this exemption from license exists when the person or occupation licensed 'may be carried on mainly through the personal efforts of the licensee.' Upon proof that the partnership here referred to is 'carried on mainly through the personal efforts of the licensee,' would the partnership be exempt from license?

"(2) Two or more disabled veterans form a partnership. Each veteran, under the Act, would be exempt from license. Could the license be issued to the partnership in this case?

"(3) Should the certificate of exemption provided for by the Act be issued by the Probate Judge?

"(4) When an exemption certificate is issued in one county and the person having such certificate wishes to engage in business in another county, should the endorsement provided for by the Act in Section 3 be made by the Probate Judge or by the License Inspector of the County?"

This office is also in receipt of several requests about this Act asking for rulings on various phases.

I will therefore attempt to discuss and construe the statute so that the tax officers may apply the same to future cases as they arise.

This is an exemption statute and is subject to the rule of strict construction.

In Dauphine & LaFayette Street Ry Co. v. Kennerly, 74 Ala. 583, the Supreme Court speaking through Brickell, C. J., quoted approvingly in Brown Inc. Com. v. Protective Life Ins. Co., 188 Ala. 168, said:

"It is an undoubted proposition that the burden of taxation, whether it be state or municipal, ought to fall equally upon all persons, natural or artificial, who may be subject to it. 'Taxation is the rule; exemption the exception'. Cooley on Taxation 146. When, therefore, it is claimed that by legislation any species of property, whether it be the property of natural persons or of corporations created for individual profit, is relieved from its just proportion of public burdens, the intention to release it ought to be expressed in clear and unambiguous terms; it ought not to be deduced from language of doubtful import, nor when there is room for just controversy, as to the legis-

lative intent. (Citing) And it cannot be of importance in the application of this principle that the exemption claimed is **not total and absolute—that it is partial and qualified,** assuming the form of a commutation, or the substitution of a burden less onerous than that which is imposed on the property of others of like kind. An absolute, unqualified exemption, and a partial exemption, a commutation, differ in degree not in character. A statute creating an exemption from taxation, or substituting, for the benefit of an individual or a corporation, taxation less onerous than that which others must bear belongs to a class of statutes in which the **narrowest meaning** is to be taken which will fairly carry out the intent of the Legislature." (Underscoring mine).

Citing Christ Church v. Philadelphia, 24 How. 302, 16 L. Ed. 602.

The Act before me purposes to exempt disabled World War Veterans and Spanish-American War Veterans from the payment of occupational and business license taxes, under certain conditions and provisions. Under the foregoing rule of construction it must be limited strictly to cases coming within its provisions and cannot be extended to any case wherein the legislative intent is doubtful.

The Act exempts disabled World War Veterans and Spanish-American War Veterans from occupational and business licenses who come under the following conditions:

1. He must be a bona fide resident elector of Alabama.

2. He must have served in the United States Army, Navy, or the Marine Corps during the World War between April 6, 1917 and November 11, 1918, or in the Spanish-American War between April 21, 1896, and July 4, 1902.

3. He must have an honorable discharge from such service.

4. The exemption from license must be for business or occupation **"which may be carried on mainly through the personal efforts** of the licensee.

5. The occupation or business must be as a **means of livelihood** of the licensee.

6. The license is not transferable.

It is also provided that the exemption shall extend to the right to operate (1) **an** automobile for hire, (2) not exceeding **five passenger** capacity, including the driver, if (3) he is bona fide owner, or has contracted to purchase, (4) is operated as means of livelihood and (5) proper tag for private use has been secured and paid for.

This license is not transferable.

Before the license can be issued to the applicant the following proof of disability must be made:

(1) A certificate of government rated disability to an extent of 10% or more, or

(2) Affidavit or testimony of reputable physician that he **personally** knows the applicant, and **who makes oath** that the applicant **is disabled from performing manual labor** as a means of livelihood, or

(3) A certificate of a Post of Spanish American War Veterans, or World War Veterans, duly executed under the **hand and seal of the chief officer** and **Secretary** attesting the fact that applicant is disabled and entitled to receive license **within the meaning and intent of this Act,** or

(4) The production of a pension certificate issued to him by the United States of America.

(5) He must also make sufficient proof of (1) resident, (2) service (3) honorable discharge (4) that business will be carried on mainly through his personal efforts and (5) that same is a means of livelihood as hereinbefore set out at length.

It is also provided that any license secured by fraud is void and that a person so securing this license is subject to prosecution for failure to take out a license.

It is further provided that this Veteran's license shall not be taken out except in the County where licensee is a bona fide resident elector; except that he may do business in some other county by exhibiting the license originally issued to him in the county in which he is a resident elector, and having the license collector to countersign same.

It is provided though, that he shall not engage in any business in more than one county at the same time nor **to conduct other than one single business of the kind permitted hereunder at one time.**

The Act provides that it shall take effect upon approval of the Governor which renders it effective from March 9, 1931. It is not retroactive and liability for licenses previously incurred are not affected.

Construing this statute under the rules of construction laid down in Brown, Ins. Com. v. Protective Life Ins. Co., 188 Ala. 168, we find that statute provides that a disabled Veteran may be exempt from **one occupational** or **business** license upon proper proof if such occupation or business is carried on mainly through the licensee's **personal efforts** and as a **means of livelihood.**

If any of these conditions are lacking the applicant is not entitled to the exemption.

Answering your specific questions, I advise as follows:

My answer to your first question is in the negative. A partnership is a different entity from an individual and this exemption is strictly an individual privilege. A partnership cannot be a War Veteran. Moreover this would be in affect a transfer of the license which is not permitted by this statute, and the transfer of licenses generally is forbidden by Section 363, Acts 1919, p. 282.

My answer to your second question is likewise in the negative. A partnership license is a business license not upon the individual but on the partnership as a distinct entity. The benefits of this exemption are strictly personal and cannot, in my opinion, be extended to include partnerships or corporations.

In answer to your third question, the "certificate to which you refer, I construe to mean the license. The law provides the usual form of license may be used with endorsement "World War Veteran's License" or "Spanish American War Veterans License" "not transferable." The "License collecting authority" of the State and County is the Probate Judge. Before issuing the license he should clearly ascertain that the requirements of law are complied with, otherwise he is without authority to issue the free license.

In answer to your fourth question, the Probate Judge should countersign such license when the licensee proposes to engage in business in another county than that of its original issuance.

The Probate Judge before he issues the free license provided by the Act must satisfy himself that the applicant is a disabled Veteran by one of the methods provided; and further that the **business will be carried on mainly** through the personal efforts of the applicant; that it is his means of livelihood that he is engaging in only one business and in one County at the same time.

"One single business" as I construe it, means one business as recognized by the general license laws, hence if a license under this statute is granted to do a particular thing, the exemption cannot be extended to licenses required for other and perhaps kindred acts. The business must be conducted mainly through the licensee's personal efforts and as a means of livelihood. Unless these facts appear, no exemption is granted, and if they do appear the exemption is given only to **one person** to do **one act** for which a license is required at **one time.**

I also have your letter of April 3rd, making the following inquiries relative to this Act:

"I. The caption of the bill provides for the exemption from the payment of **'occupational taxes'**. The body of the bill provides the exemption from both **'business'** and **'occupational'** licenses. Is this such a variation between the caption and body of the Act as to destroy the exemption from business license?

2. To what extent would a partnership be exempt:

(a) When one person in the partnership is a disabled veteran, and the other member or members of the partnership are not disabled, it being the fact that the business is 'carried on mainly through the personal efforts of the licensee'.

(b) If both or all the members of the partnership are disabled.

"3. The bill, provides for the exemption when the business or occupation is 'carried on mainly through the personal efforts of the licensee'. Suppose a person operates a number of slot machines, that is, suppose the person is in the business of operating slot machines, and gives all of his time to this business, and going about and locating these machines, would such person be exempt from paying license on all the slot machines operated by him? Again, suppose the disabled veteran operates a soda fount and employs, say, six or more clerks. Would such person, giving his entire time personally to this business be exempt from the license levied on soda founts? Again, take the case of a person operating a pool or billiard room where license on each table is required, would the disabled veteran operating this pool room and giving his personal attention to it be exempt from all pool table licenses?"

In answer to question one of the foregoing letter, I advise that while there is a technical difference between business and occupational license taxes, yet in common parlance the terms are used so interchangeably, as to make the title germane to the Act, in my judgment. Giving the Act the presumption of constitutionality, unless clearly otherwise, I am of the opinion that it is not violative of Section 45 of the Constitution, and the omission of the words "business licenses" from the title does not render inoperative the exemption given business licenses by the body of the Act.

Question two, both subdivisions A and B, are answered above in reply to your letter of March 21st.

In answer to your third question, it is my opinion that the exemption would not apply to the license on slot machines. The license on slot machines is on the device itself and not on the person owning or operating it. A slot machine is not a business or an occupation and the license is purely on the device. The statute recognizes this distinction by extending the exemption specifically to the operation of an automobile for hire not exceeding five passenger capacity thereby, in my opinion, showing that the Legislature recognized that there are certain licenses on machines or

devices and specifically naming one of them, to-wit, the taxi license on a five passenger automobile used for hire which should be exempt, provided the proper private tag has been paid for. This argues therefore, that all machines or devices where the license is on the machine or device or the thing itself are not exempted unless specifically so and the automobile for hire is the only specific exemption. The same reasoning would apply to a pool or billiard table. The license provided by the Acts of 1919 is on the table and not on the person owning or operating it. Therefore, as no exemption is specifically given to the device, under the rules of strict construction none can be had.

Answering your fourth question, under the facts set out by you, I do not think the applicant would be exempt from the soda fount license. The business as described by you is **not carried on mainly through the personal efforts of the licensee.**

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 14, 1931

Hon. H. H. Stewart, Assistant Director,
Board of Administration,
CAPITOL.

Sentences—One cannot be sentenced to serve concurrent sentences. A judgment entry to the effect will be treated as surplusage.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of April 9, 1931, in which you request my opinion as to whether or not the Convict Department may receive a prisoner from the sheriff of a county, where the transcript of the court reads as follows:

"It is the sentence of the court that said defendant, Shep Lee, be imprisoned in the penitentiary of the State of Alabama for a term of not less than three years minimum and a maximum term of three years and one month, sentence to run concurrently in cases 7388, 8391, 7394 and 7397."

I am of the opinion that your question should be answered in the affirmative.

Section 3615, Code of Alabama, provides as follows:

"3615. Two or more convictions.—When a convict is sentenced to imprisonment in the penitentiary on two or more convictions, the

imprisonment on the second, and on each subsequent conviction, must commence at the expiration of the imprisonment on the preceding conviction."

Sentences cannot run concurrently in this State. That part of a sentence that specifies the date when the sentence shall begin and end is surplusage, and the first sentence may end and the second sentence may begin without reference to the dates specified for their beginning and ending.

Biennial Report of Attorney General, 1922-24, p. 337.

In the instant case, the statement that the sentences are to run concurrently is merely surplusage to an otherwise regular judgment entry, and may be disregarded.

These words are not necessary to the regularity and validity of the sentence, and the statute does not contemplate that the court shall fix the date on which the sentence shall begin or end, therefore, these words can and should be treated as surplusage.

Ellis v. State, 11 Ala. App. 30.

The court can impose only such penalty as the law sanctions. It can not impose a sentence of greater or lesser severity than that commanded by law. In such a case the question is not one of injury or favor to the accused, but one of legal authority. The court can only do what the law commands. Its judgment is a declaration of the law.

Brown v. State, 47 Ala. 47.

In view of the above, I am of the opinion that the sentence in the instant case should be treated the same as if it had not stated that the sentences should run concurrently. Section 3615, Code of 1923, should be complied with.

Relative to the costs in cases where a convict is sentenced in more than one case, same is governed by Section 3670, and paid upon the delivery of the convict to the proper officials.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 14, 1931

Hon. T. R. Martin,
Judge of Probate,
Union Springs, Bullock County, Ala.

Peddlers—Medicine.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of March 25, 1931. You call attention to Schedule 80 of Section 361, Revenue Act of 1919 (Schedule 137, Comp. Revenue Laws 1929, p. 293) with regard to peddlers of medicine, the license therefor and those exempt from such license because of physical disability.

You request my opinion:

> Would a peddler of medicine and merchandise be subject to a license should such peddler manufacture his own formula and offer for sale as a general remedy or tonic, provided this peddler has a certificate from the county health officer exempting him from license because of physical disability—it being understood that this peddler does not pose as a doctor or pretend to treat any person for any specific disease or injury?

In answer will state that the fact he peddles medicine that he himself legally manufactures is immaterial. If he "peddles" medicine under conditions mentioned by you after having obtained a certificate from the County Health Officer that he is physically disabled to do manual labor, he is exempt from the license provided by said Schedule.

Of course, you understand that there is no exemption from license for an "itinerant vendor" because of physical disability to perform manual labor who does the things for which a license is required under Schedule 81, Section 361, Revenue Act 1919 (Comp. Revenue Laws 1929, Schedule 136). But you do not appear to have this question before you, and the facts you present are not sufficient for me to pass on that matter.

Opinions Attorney General 1922-1924, p. 70
See also—Opinions Attorney General 1926-1928, pp. 253, 622.
See also—Opinions Attorney General 1928-1930, p. 352.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 14, 1931

Hon. W. Y. Fleming,
County Superintendent of Education,
Opelika, Lee County, Alabama.

County Board of Education—Borrowing money to pay illegal purchases subsequently ratified—not allowed.

Ratification of illegal purchases not void ab initio.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of April 1, 1931. You state that:

"The principal of a local consolidated high school bought for the school some equipment, viz: auditorium chairs, students' desks, physical and chemical equipment and certain equipment for the vocational-agricultural school which is a part of said consolidated school. This equipment has not been paid for and it is a debt against the school. Your County Board desires to issue and sell district school tax warrants against the district in which the school is located, take the funds realized thereon and pay the bill."

You request my opinion:

Has the County Board of Education the legal right to do so?

There is no authority of law for the County Board to issue **warrants** against the district tax of said district for such purpose.

The power of the County Board to **borrow** money and the purposes for which it may do so is limited by statute.

Section 130, 136, 137, 281, 283, Alabama School Code, 1927.
Opinions of Attorney General 1926-28, p. 122,
Opinions of Attorney General 1928-30, pp. 122, 539, 677, 743, 970.

The County Board of Education has **exclusive** power to contract with reference to the expenditure of the public school funds of the county.

Section 132, School Code.

No trustee, teacher or principal has authority to bind the county board of the public school funds under its control.

Section 250, 289, School Code.

A person contracting with any public agent or officer does so with the presumption of full knowledge on the limitations of the power of such agent or officer to contract.

Under no circumstances whatever has the principal of a school the authority given by law to purchase supplies for his school in the name and on the credit of the county board of education. Even the county board must enter into its contracts in the manner strictly provided by statute. (Section 132, School Code).

To hold that school teachers generally might purchase at pleasure whatever they deem essential toward equipping and running the education institution in which they are mere employes, without compliance with the statutory requirements and without consent of the County Board of Education, and thereby create legal obligations against the public school funds of the county, would set at nullity every legislative safeguard in the expenditure of the school money and would render ineffective every protective statute framed intentionally for the purpose of requiring that those who would assert claims against the public treasury first obey the law. The purpose of statutes defining by whom, when, to what extent and in what manner public funds may be obligated is to safeguard them and to prevent just such occurrences as this one.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 17, 1931

Hon. P. C. Black,
Judge of Probate,
Geneva, Geneva County, Ala.

Gasoline tax—use of.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of April 9, 1931 together with a map and plans showing how the Court of County Commissioners of Geneva County proposes to repair or construct Bellwood or Martin bridge across the Choctawhatchee River on a public road leading from Hartford to Bellwood.

You request my opinion as to whether or not the proceeds of the gasoline tax may be expended for this purpose.

An Act approved August 27, 1927 (General Acts 1927, p. 328) amending the 1923 gasoline tax statute, in dealing with the expenditure of said fund, provides in part as follows:

"Provided that all the funds derived by the several counties from said tax shall be expended exclusively for maintenance and repair of roads, highways and bridges in said counties."

Whether or not the work in the instant case comes under the head of "maintenance and repair" or "construction," would determine the validity of said expenditure of the gasoline fund.

"Construct" means to bring into existence. "Maintain" means to support or preserve what has been brought into existence. "Repair" means to restore to a good state after injury, depletion, deterioration or partial destruction.

L. N. A. & C. Ry. Co. v. Goodman, 4 N. E. 163, 104 Ind. 490;
Verdin v. City of St. Louis, 633 S. W. 480, 131 Mo. 26.

These judicial definitions of the word "construct" "maintain" and "repair" make plain the meaning of the provision limiting the use of this fund to the maintenance and repair of highways and bridges. The fund is to be used to restore to good condition and to preserve in good condition existing highways and bridges.

Biennial Report of Attorney General 1922-24, p. 281.

It has been held by this office, that the tearing out of an old bridge on a main county road and **replacing it** with **a new** one having concrete abutment and steel floor joists, was "construction."

In a former opinion of the Attorney General, it was stated that the new parts of the road to be constructed cannot be paid for out of the gasoline tax fund, while the parts of the old road being repaired may be paid for out of said fund.

Biennial Report of Attorney General 1928-30, p. 857.

The information you have given me is not sufficient to definitely answer your inquiry. Cases of this kind involve a mixed question of law and fact. This office is authorized to pass upon only the legal side.

By applying the facts of each particular case to the propositions of law above enumerated, a definite conclusion could be reached.

In an opinion of the Attorney General, Biennial Report 1922-24, p. 281, supra, Hon. Harwell G. Davis, then Attorney General, laid down the following rule—which is likewise applicable to the instant inquiry:

"In those many cases which lie in the twilight zone between "construction" of a road and "repairing and maintaining" a road, the authority charged with the expenditure of the funds will have to deter-

mine from all the facts whether the expense of such case is a proper charge against the fund."

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 15, 1931

Hon. G. O. Wallace,
Judge of Probate, Barbour County,
Clayton, Alabama.

First mortgages given to the Federal Land Bank of New Orleans on the crop for the current year, are not subject to the filing tax provided for by Section 4½ of Revenue Act 1919.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Receipt of your letter of April 3rd is acknowledged.
You make the following statement of facts:

The Federal Land Bank of New Orleans has presented for record several mortgages that it has taken on crops to be grown on lands in Barbour County during the present year, recently executed, and the sum secured falling due next fall.

The precise nature of the consideration is not recited in the mortgage, nor do the mortgages disclose the ownership of the lands on which the crop is to be grown.

You ask my opinion as to whether or not a tax for filing such mortgages for record must be paid as provided by Section 4½ of the Revenue Act, 1923.

In reply will say that by the Act of Congress of July 17, 1916, C. 243, Section 26, 39 Stat. 380, it is provided:

"Every Federal land bank and every national farm loan association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except taxes upon real estate held, purchased, or taken by said bank or association under the provisions of section eleven and section thirteen of this Act. First mortgages executed to Federal land banks, or joint stock land banks, and farm loan bonds issued under the provisions of this Act, shall be deemed and held to be instrumentalities of the Government of the United

States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation.

"Nothing herein shall prevent the shares in any joint stock land bank from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the bank is located; but such assessment and taxation shall be in manner and subject to the conditions and limitations contained in section fifty-two hundred and nineteen of the Revised Statutes with reference to the shares of national banking associations.

"Nothing herein shall be construed to exempt the real property of Federal and joint stock land banks and national farm loan associations from either State, county or municipal taxes, to the same extent, according to its value, as other real property is taxed."

The foregoing states what may not be taxed and what may be taxed. In the case of the Federal Land Bank of New Orleans v. Crossland, 261, U. S. 374, it was held that a first mortgage executed to a Federal Land Bank is a governmental instrumentality and not subject to the payment of such tax.

From aught that is stated in your letter, I presume the mortgages, in question, executed to the Federal Land Bank on the crops are first mortgages, and fall under the rule laid down in said case. They do not fall within the classes of property left subject to taxation by the U. S. Statute above quoted.

I am, therefore, of the opinion the mortgages in question are not subject to the said tax of fifteen cents on each hundred dollars of the debt secured, on being filed for record.

It will be noted that the constitutionality of the Act quoted from was upheld by the Supreme Court of the United States in the case of Smith v. Kansas City Title and Trust Co., 255 U. S. 180, 207, 212.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 16, 1931

Hon. Wm. F. Feagin, Director,
State Board of Administration,
CAPITOL.

Authority of State Board of Administration to reimburse persons injured by employees of the State.

Opinion by the Attorney General.

Dear Sir:

I have your letter of April 11th together with letter addressed to you by Messrs. Inge, Stallworth & Inge, Attorneys of Mobile, in which they make reference to an accident on the State highway.

These gentlemen state that Mr. Moody of Tuscaloosa was injured by running into an unlighted obstruction or barricade on the Craft Highway.

This is to advise you that there is no provision of law authorizing you to settle any such claims. The State cannot be made a party defendant to a suit for damges or to any other suit. I know of no provision of statute authorizing you in any case to ascertain the damage suffered by persons by reason of the negligence of State employees. There is no provision authorizing you to pay any such claims made upon your Department, or any other Department of State Government.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 16, 1931

Hon. Thos. B. Bennett,
Tax Collector, Choctaw County,
Butler, Alabama.

Purchaser of timber rights at tax sale cannot cut timber until he receives deed as provided by law.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of March 7th in which you state:

"We have a lumber company in our County that assessed regularly a planing mill, a lot of lumber, and some timber rights. The planing mill burned, part of the lumber burned and the balance shipped away. The timber rights will expire in a few months."

You ask my opinion:

"If these timber rights were advertised and sold, would the purchaser have the right to cut the timber immediately or would he be compelled to wait two years?"

It is my judgment that the purchaser cannot cut the timber until he has received a deed therefor from the Probate Judge.

"Growing trees on land are a part of the realty."

Smythe Lumber Co. v. Austin, 162 Ala. 110.

Section 3119, Code of Alabama, 1923, provides in part as follows:

"* * * * but neither such purchaser nor any one claiming under him shall have the right to cut standing timber from land so purchased at tax sales, until he shall have received a deed for the land from the probate judge, and any one in possession shall have the right to growing crops planted by him."

It would therefore appear that growing trees are real property and hence in my opinion, would come under the prohibition of Section 3119.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 16, 1931

Hon. E. L. McConnell,
Clerk, Circuit Court, Lauderdale County,
Florence, Ala.

Extradition of felons—such costs or expenses cannot be taxed as an item of cost against the defendant.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of March 26, 1931, in which you state:

We have a murder case in this County in which the Sheriff's expenses for extraditing the defendant from another State to the State of Alabama for trial is $74.00.

You request my opinion:

How is this cost taxed and paid?

Where a felon is arrested in another State and brought back to the State of Alabama for trial the Sheriff commissioned as agent to receive such felon is paid the cost of such extradition by the State under Section 3749, Code of Alabama, 1923. This Section provides that he shall receive

$2.00 per day and actual expenses to be computed on the nearest route to be traveled to and from the place where the defendant is confined.

These expenses should be itemized and accompanied by proper receipts as to railroad and bus fare, lodging and meals and this of course must be sworn to and forwarded to the State Auditor and if found correct, he draws vouchers for same.

In felony cases I find no law for taxing the expense of extradition against the defendant on conviction. Sections 3667 and 3668, Code of Alabama, 1923, fix items of cost in felony cases to be paid by the State on conviction, and place a limit of $250.00 on the total amount in a case. The cost of extraditing such defendant is a separate charge and is paid under the provisions of Section 3749, supra. Where there is a conviction for a felony and the defendant is sentenced to serve a term in the penitentiary, he is not sentenced for costs as in misdemeanor cases where the defendant is sentenced to hard labor of the County. I find no authority of law for taxing the item of cost referred to against the defendant and a judgment rendered for same on which execution could issue.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 16, 1931

Hon. J. M. Scott,
Chairman of County Jury Board,
Fort Payne, Alabama.

County Jury Board—

1. Compelling persons to appear before Board for the purpose of examination as to qualifications, etc.

2. Liability of county for the pay of members of Jury Board.

3. Clerks of Jury Board.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of April 7, 1931, in which you request an opinion from this office on the following matters:

1. Can the Jury Board compel the attendance of persons before it when there are no provisions made for the payment of per diem or mileage?

2. Is the present Jury Board entitled to be paid the amount prescribed by the Act creating such in spite of the fact that the old Jury Commission has received three-fourths of the amount which they were to receive for the year 1931 before the abolishment of said Jury Commission.

3. What provisions are made for clerks of Jury Board in Counties having less than two hundred thousand population.

It is my opinion that your first question should be answered in the affirmative, in spite of the fact that there is no provision made for the payment of per diem and mileage to the persons summoned to appear before the Jury Board. The Act makes it a misdemeanor for the violation of this regulation.

In answer to your second inquiry, I am of the opinion that the county will have to pay each member of the Jury Board as provided for in the Act.

Section 5 of said Act is as follows:

"Each member of the Jury Board shall be paid the sum of $5.00 per day for the time actually engaged in the discharging of his duties as such member to be paid out of the County Treasury upon the warrants of the Probate Judge of the County. Such warrants are to be issued by such Probate Judge upon evidence satisfactory to him that such service has been rendered but the compensation of each member of the Board shall not exceed for any year **of his** term the following amounts * * *."

The term of office of the members of the present Jury Board began on the date of their appointment and qualification and the first year of their term will end on the first Monday after the second Tuesday in January 1932. In other words each member is entitled to $5.00 for each day on which he is actually engaged in the discharge of his duties so far as it does not exceed the amount specified in the Act.

In answer to your third question, I am of the opinion that Section 8 of said Act answers your question. The clerk of said jury Board according to that Section is to receive $5.00 a day for the time actually engaged in the performance of his duties.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 17, 1931

Hon. S. R. Butler,
State Tax Commissioner,
CAPITOL.

Attention: Hon. Jno. S. Mooring.

The meaning of the work "garage" in Schedule 11, Section 361. Revenue Acts, 1919, is a house for the storage of automobiles and does not include an open lot. The fact that a charge is made for the storage of an automobile in an open lot does not constitute such open lot a garage.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Receipt of letter from your Department of March 21st signed by Hon. John S. Mooring, State Tax Commissioner, is acknowledged. You ask my opinion as to the meaning of the word "garage" as used in Schedule 11, of Section 361, Acts 1919, page 401. This Section begins as follows: "For each garage where a charge is made for storage of motor vehicles."

In reply will say that in my opinion the word "garage" as there used means a place for housing automobiles. The word "house" as here used, in my opinion, includes anything in the nature of a house protecting the automobile from weather, used for storing automobiles in, is a garage within the meaning of said Schedule. Where such a place is kept for the storage of motor vehicles and a charge is made for such storage, such a building is a garage. An open space with no building to protect the car from weather is not, in my opinion, a garage. The fact that a charge is made for storing an automobile in such place does not constitute such place a garage.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 17, 1931

Hon. A. G. Richardson, Jr.,
Member Court of County Commissioners,
Chatom, Washington County, Ala.

Convicts—county convicts not entitled to net earnings upon reversal of judgment where such convict was not worked by State Board of Administration.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of April 6, 1931, in which you request an opinion from this office as to whether the county is liable for the earnings of a county convict who was sentenced to 12 months hard labor and an additional 118 days to pay the cost of conviction and where after serving the entire sentence the judgment of trial court was reversed.

It is my opinion that under the facts as I interpret them in your letter the county is not liable to the ex-convict for his earnings.

Section 5240, Code of Alabama, 1923, to which you referred in the first paragraph of your letter deals with those persons who have been committed to jail charged with a misdemeanor and such person while awaiting trial elects to perform hard labor for the county. In this instance the labor performed by the ex-convict was after trial and judgment of conviction. From your letter I gather that he was convicted of a misdemeanor. The provision of statute that the earnings of a convict should be paid to him on reversal, under the Code of 1923, applies only to felony cases. Under the Act of 1927 it applies only where county convicts have by contract been turned over to the State to work under the Board of Administration.

Section 3672, Code of 1923, (General Acts 1927, p. 53).

I am herewith enclosing copy of opinion rendered by this office in June 1929 in regard to this matter.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 17, 1931

Hon. H. W. Owens,
Judge of Probate, Henry County,
Abbeville, Alabama.

1. Article 10 of Section 16 of Code of 1923 was superceded by Sections 6776, 6777, 6778, 6779, 6780 and 6781 of Code 1923.

2. By Act No. 638, approved Sept. 6, 1927, Section 6779 of Code, 1923, was amended.

3. The meaning of the words: "the income from taxation of said County for the preceding year," as used in Section 6777 of the Code, 1923, is the income from taxation of said County during the preceding fiscal year—Oct. 1st to Sept. 30th following—, which went into the general funds of said County, to be used for said County for

general County purposes, at the discretion of the Court of County Commissioners, and has no reference to special taxes, which must be used for special purposes as provided by the Constitution or by Act of the Legislature.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Receipt of your letter of April 8th is acknowledged.

You ask my opinion as to what constitutes "the County's income" within the meaning of Article 10 of Chapter 16 of the Code, 1923.

In reply, will say that said Article 10 need not be considered for any purpose. It was a codification of an Act of 1915. There was written into the Code, 1923, Sections 6776, 6777, 6778, 6779, 6780, and 6781 by the Code Codifier, or Code Committee, and duly adopted, which was intended to govern the entire matters covered by said Article 10 of Chapter 16, which codified said Act of 1915.

In my opinion, said Article 10 was superceded by said Sections of the Code above mentioned.

By Act No. 638, approved September 6, 1927 (Acts, 1927, page 753) said Section 6779 was amended.

Said Section now reads as follows:

"That Section 6779 of the Code of Alabama be amended so as to read as follows: Section 6779: 'Warrants issued under the provisions hereof shall bear interest at a rate not exceeding eight per cent per annum; shall not be for a greater sum than one-half the income of said County for the preceding year and shall mature not later than February first of the year following and shall not be renewed'.

Approved September 6, 1927."

It will be seen, on reading and considering said Sections, that the Legislature intended that the loan authorized should fall due not later than February first of the year following; that such loan must be paid out of the proceeds of taxes for the year current at the time the loan was obtained; that such loan should not be for a sum greater than one-half the proceeds of taxation of said County for the preceeding year.

In my opinion, the word "year," as there used, means the tax or fiscal year and not the calendar year.

There are several taxes and moneys collected by county officers. You will notice that Section 6777, limits the loan to a sum not greater "than one-half the income received from **taxation** of said County for the preceding year." This wording of Section 6777 eliminates the fine and for-

feiture fund, witness fees collected, and the gasoline tax fund divided to the counties by the State.

In my opinion, special taxes such as the special three mill school tax, which can be used only for school purposes in the manner provided by law, and the road and bridge tax, which can be used only for the purposes named, cannot be considered as part of "the income from taxation of said County," as used in said Section.

In my opinion, what is meant by "the income from taxation of said County" in said Section 6777, is the sum which went into the general fund of said County from taxation of said County, during the preceding fiscal year—from October 1st to the following September 30th—and was subject to the disposition of the Court of County Commissioners for any of the general purposes of the County. The debt created could be paid out of such taxes and it was of such taxes that the Legislature was speaking. Else, an amount greater than could be paid back out of such general fund of the current year would be permitted. This was, clearly, not intended.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 17, 1931

Dothan Bank & Trust Company,
County Depository,
Dothan, Houston County, Alabama.

County Depository—Where State warrant received by county depository for county's pro rata share of gasoline tax accompanied by letter from State Tax Commission that certain part was paid State under protest, depository not liable for honoring warrants against it when same are in proper form and for lawful purposes.

Opinion by the Attorney General.

Dear Sir:

Please refer to your letter to me dated March 5th, 1931, and to my answer dated March 12, 1931.

In your letter you state:

In January the State Tax Commission sent to this bank $3,979.08, the same being 1/67 of the tax on gasoline collected under the Act of February, 1923, in the month of January, 1931, for sales during

the month of December. Along with this came a letter from the State Tax Commission stating that:

"Included in the warrant is the sum of $567.26, said amount being 1/67 of the amounts paid under protest."

In February 1931, you received from the State Tax Commission $3,740.42 for gasoline tax, along with a letter from the Commission stating:

"Included in the warrant is the sum of $511.33, said sum being 1/67 of the amounts paid under protest."

You then refer to the Act of February 10, 1923, with reference to the gasoline tax and request my opinion:

(1) Is said Act of February 10, 1923, (General Acts 1923, p. 38) unconstitutional?

(2) Must the county depository pay the sums of money to the county for its uses or withhold same for our protection?

In answer to your first question will state that the Act of February 10, 1923 (General Acts 1923, p. 38) which was amended by Section 83 of the Act of August 27, 1923 (General Acts 1923, p. 197)), and later amended by the Act of August 27, 1927, (General Acts 1927, pp. 326, 328) is not unconstitutional.

In answer to your second question will state that the said gasoline tax fund should be paid out by the county depository on proper warrants for lawful purposes, regardless of the fact that you have received the above mentioned communications from the Tax Commission.

In passing, will state that the gasoline tax fund of the county should be kept separate and apart from the County Road and Bridge Fund, for it is more limited in its use. (See Acts above cited).

As to the uses to which the gasoline tax fund may be put this office has repeatedly ruled.

Opinions Attorney General, 1928-1930, p. 216,
Opinions Attorney General, 1926-1928, pp. 117, 329,
Opinions Attorney General, 1922-1924, pp. 209, 281.

The Act of February 10, 1923, was not amended by the Act of January 25, 1927, but, as stated, was limited and amended by the Acts of August 27, 1923 and August 27, 1927, supra.

As to your responsibilities in the payment of warrants generally, I invite attention to previous rulings of this office.

Opinions Attorney General, 1928-1930, p. 903,
Opinions Attorney General, 1920-1922, pp. 135, 373.

You will please, therefore, substitute this opinion for my letter of March 12, 1931.

The reports of Attorney General cited above are on file at the courthouse of your county. I am sending you copies of reports for 1926-1928 and 1928-1930.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 18, 1931.

Hon. G. P. Butler,
Judge of Probate,
Opelika, Lee County, Alabama.

Entertainment where dancing is had for which admission is charged outside incorporated towns not liable for license under Schedule 46 of Section 361, Acts 1919, p. 282.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"There is a privately owned Camp situated on the Chattahoochee River in Lee County at which place there is sometimes held a dance for the entertainment of the guests; at which said dance there is an admission charged or a collection taken in order to pay for the orchestra to furnish the music.

"This camp is not situated in any incorporated town and is not solely for the purpose of dancing, but is often used by families on vacation and for others who may be invited down by the owners.

"The license inspector of this County has cited the owners to take out license for the operation of a dance hall.

"I am seeking your opinion as to whether it is necessary for the owners of such a place to procure license for holding a dance under these conditions and outside of a municipality.

"The guests as above stated are invited and it is not open to any others nor do they have any set schedule of dates for dancing."

Replying thereto I beg to advise that Schedule 46, Section 361, Acts 1919, p. 282, provides as follows:

"For each entertainment in towns or cities of over one thousand inhabitants, where dancing is had or permitted to be had, and where an admission fee is charged, five dollars for each entertainment; but this shall not apply to an entertainment given in a regularly licensed theater."

You will see from the foregoing that the license applies only to towns or cities of over one thousand inhabitants ,and, therefore, no license would be required under the facts set out by you.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 20, 1931.

Hon. W. E. Merrill, President,
County Board of Revenue,
Columbiana, Shelby County, Ala.

Counties—Examination and audit of financial affairs by accountant.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of April 13, 1931. In it you state:

"Several of our county officers have not had an examination for the past seven or eight years, although a number of requests have been made of the Chief Examiner of Accounts.

"An expert auditor, with twelve years experience as an Assistant State Examiner, has proposed to make this examination, stating that his audit will be accepted by the State Department as a substitute for one made by the regularly constituted authorities."

You request my opinion:

May the County Board of Revenue cause an audit to be made by an expert auditor of such records and accounts and pay for same out of county funds?

In answer will state the **Court of County Commissioners or Board of Revenue** may employ an expert accountant to examine and audit and re-

port on the records, books and accounts of the county officers, but **as to the County Treasurer's** accounts the Probate Judge does so.

Opinions by Attorney General (office edition) 1921, p. 265.

Counties may exercise only the following powers:

(1) the powers granted in express terms;
(2) those necessarily implied in or incident to the powers expressly conferred; and
(3) those indepensabily necessary to the accomplishment of the declared objects and purposes of the municipality.

Weakley et al vs. Henry, 86 So. 46.

Under the statute stating that;

"Every county is a body corporate, with power to sue and be sued in any court of record."

It has been held that the county **necessarily** has the power to employ counsel and compensate such counsel from county funds.

Sec. 181, Code of Alabama, 1923;
Jack vs. Moore, 66 Alabama, 184;
See also Sec. 5498 (8), Code of Alabama, 1923.

By Section 224 the Court of County Commissioners is charged with the duty of auditing all claims against the county.

By Section 303 (11) (12) the Court has a right to certain reports by the County Treasurer concerning county finances.

By Section 308 the **Judge of Probate** must, each year, without giving any notice or informtaion thereof to the County Treasurer, apppoint one expert accountant, of known integrity, to examine the books and vouchers of the County Treasurer and report the condition of same. The person so appointed must proceed without delay to make the examination and report, and to that end is invested with all the powers and authority conferred by law upon the examiner of public accounts. Such accountant shall receive such compensation as may be allowed by the Court of County Commissioners or Board of Revenue.

This would also apply to the county depositories or custodians of county funds.

By Section 303 (13) the Treasurer furnishes the Probate Judge, in January of every year, a verified statement of all moneys received by him for the county during the preceding year and of all claims received by him in lieu of money, which are receivable in payment of county taxes,

which statement must designate the time and person from whom such moneys or claims were received. (See also Act No. 126, House Bill No. 56, approved March 9, 1931, concerning quarterly reports of county officers).

A careful examination of Chapter 17, Code of Alabama 1923, and other statutes relating to the powers, functions, and duties of the County Treasurer or Depository will readily reveal its manifold connections with other offices or agencies of county government.

Where a Treasurer's term expires, or he is removed from office, the Treasurer, or if the Treasurer dies, then his personal representaive, must state his account, etc., as provided by Section 309, Code of Alabama 1923, and make a report to the **commissioner's court** which must **satisfy itself** that the account is correct.

Of course it cannot be presumed that members of a commissioner's court are expert accountants and it would be a difficult, if not almost impossible task, for them to determine the correctness of such accounts, etc., except through the work of the expert.

Under Section 6755 (4) (5) the Commissioner's Court is required (1) to examine, settle and allow all accounts and claims chargeable against the county. (2) to examine and audit the accounts of all officers having the care, management, collection or disbursement of money belonging to the county, or appropriated for its use and benefit.

By Section 6766, as amended by Act 1927 (p. 691), **it** must make a semi-annual publication of an itemized report of **receipts** and **expenditures** of money of the county, which statement must show those various items mentioned in such statute; provided that in certain counties the statement is **annual.**

By Section 1397, Code of Alabama, 1923, as amended by the Highway Code, Act of 1927 (Acts 1927, p. 391) the court has legislative, judicial and executive powers except as limited by Article 3 of Chapter 32, Code of Alabama 1923, as to the construction, maintenance and improvement of public roads, bridges and ferries in the county and may enter into all **necessary contracts** to build, construct, make, improve and maintain a good system of public roads, bridges and ferries in the county.

This section has been very liberally construed.

Ensley Motor Car. Co. vs. O'Rear, 196 Alabama 481, 71 So. p. 704;
Terry vs. State, 18 Ala. App. p. 333, 92 So. 85.
(Opinions Attorney General 1928-30, p. 977 and opinions there cited).

Although this section does not authorize employment of assistant counsel in a **criminal** prosecution where the validity of a road law is involved.

Walker vs. Bridgeforth, 9 Ala. App. 257, 62 So. 323.

The foregoing references to state statutes, as well as many others not necessary to mention, will indicate clearly that it was not the purpose of the legislature to attempt to specify definitely the authority in every respect of the governing body of the county finances, but to leave many things to rest either (1) by necessary implication or (2) as authorized to be done because "indispensably necessary to the declared objects and purposes" of the creation of the county as a governmental instrumentality and body corporate to supervise, direct and control the financial system of such political subdivision of the State.

In Arkansas the powers and authority here exercised by the commissioners' court are exercised by a county court. The statutory powers there are very similar to those here conferred on commissioners courts. In Arkansas there is no statutory authority given the court to employ an expert accountant to audit the books and finances of the county. In Arkansas, however, the court was given original jurisdiction in all matters relating to county taxes, roads and bridges; the disbursement of money for county purposes; the authority to audit, settle and direct the payment of all demands against the county; to disburse money for county purposes, and in all other cases that may be necessary to the internal improvement or local concerns of the county.

It was there held that the county court had the **implied power to employ expert accountants to audit the books and finances of the court**; that it was a necessary incident to the powers expressly conferred upon the county court.

Leathern vs. Jackson County, 122 Ark. 114, 182 S. W., p. 570, 15 C. J. 546.

In Missouri the power and authority exercised by County Commissioners in Alabama is also exercised by the County Court. The statutes as to the power and authority of such county court in Missouri are very similar to our statutes as to the power and authority of Courts of County Commissioners and Boards of Revenue.

The question as to authority to employ expert accountants was raised there and it was decided that the county courts had authority to do so **because this power was incident to the authority and powers which were expressly conferred.**

Blades et al. vs. Hawkins et al., 133 Mo. A. 328, 112 S. W. 979.

In Alabama the implied powers of counties and cities are determined by our courts usually upon the same or kindred principles.

Mayors of towns and cities in Alabama are not only authorized, but are required to employ an expert accountant to audit the books and ac-

counts of city officials at least once a year. This expression of the public policy of the State indicates that it is regarded as being good business to have this work done in the case of cities and towns. The policy is also definitely expressed with regard to the county finances coming into the hands of the county treasurer. And surely a policy with regard to the cities and towns cannot be regarded as being more appropriate there than as to counties.

The commissioners' court has a duty and right to know the exact condition of the financial affairs of the county at all times. No business of such magnitude can be safely and efficiently handled except that the court is possessed of full information on the subject. An annual audit of the records, books and accounts of all county officers authorized and required to receive or disburse public funds of the county is "indispensably necessary to the accomplishment of the declared objects" of a county as a governmental instrumentality and body corporate. No intelligent and accurate audit can be made by reference solely to the papers, records and accounts in the hands of the County Treasurer. The whole system is so interwoven and interdependent that an audit, of necessity, must be based upon reference to and actual examination of the books and accounts of the probate judge, the tax assessor, the tax collector, the county and circuit clerk, the register, the county and circuit solicitor, the court of county commissioners, and other related agencies and offices.

The State Department of Examiners is authorized and required to make examinations of all records and accounts of public officers of the state and counties and state institutions, agencies, etc., required to receive or disburse public funds and the reports of these examinations constitute the basis upon which the State charges public officers, but the provision for such a department and examinations by it were not intended to be exclusive of the right of the county as a body corporate to manage and conduct its affairs or the accounting for its moneys and audit of its transactions. In the very nature of things a county desiring to conduct its affairs according to law and in a business-like manner must keep close scrutiny on the records and accounts of its officers and agents, and surely it must not need to depend upon the uncertainty of time, the delays over which it has no control, the possible failure altogether, or some outside agency to set it right.

Of course no audit of county records could prevent the State through its proper officers from conducting an examination at such time as it pleased to do so and no audit by an accountant employed by the county would necessarily supplant an audit by the State.

Whether the examination and result thereof by the accountant you refer to would be a sufficient basis for the Chief Examiner of Accounts of the State to determine the financial affairs of the various public officers of the County, is a matter upon which I do not feel called upon to decide. That would be a matter directing its consideration to that state officer, who if he chose to do so, upon reviewal thereof by his own accountant and such

other investigation as he chose to make to ascertain its correctness, might either accept or reject it.

Opinions of Attorney General (office edition) 1921, p. 265.
Opinion May 17, 1921, to Chief Examiner of Accounts.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 20, 1931.

Miss Gertrude P. Calloway,
County Treasurer,
Clanton, Chilton County, Alabama.

County Treasurer—Liability for payment illegal warrants.

Opinion by Assistant Attorney General McCall.

Dear Madam:

I have your letter of April 7, 1931. You call attention to an opinion of this office to Hon. J. M. Mims, Commissioner of Chilton County, dated March 31, 1931, construing the law with reference to the Commissioners Court employing relatives of its members within the prohibited degree and also referring to the right of such court to pay the Probate Judge in excess of the statutory rate of fifteen cents per hundred words for clerk hire for keeping the minutes of said court.

You request my opinion:

1st. If I, as County Treasurer, have personal knowledge that a warrant has been issued to a relative of a commissioner which relative is within the prohibited degree of relationship, and that such warrant is for services as an employee of the county, am I responsible if I pay such warrant?

2nd. If I, as County Treasurer, have personal knowledge that a warrant for clerk hire for the Probate Judge is in excess of the statutoy rate, am I responsible if I pay it?

3rd. Referring to my first question, if I do not have knowledge of the relationship of the employee to the commissioner, would I be responsible if I paid such warrant?

In response to all of your questions will state it is the duty of the County Treasurer to refuse to pay a claim although such claim has been audited and allowed by the commissioners court, if the claim is not prop-

erly chargeable to the county and if the treasurer pays such claim he does so at his peril. The fact that the claim has been audited and allowed by the commissioners court will not be a protection to the treasurer if either upon the face of the claim or upon the face of the records of the commissioners court, or otherwise, evidence has been brought home to the treasurer that the claim is in fact invalid although it has been allowed by the commissioners court.

Opinions Attorney General, 1920-1922, pp. 135, 137, Mobile Co. vs. Williams, 180 Ala. 639, 61 So. 963.

And the fact that the warrant has been signed by the officer authorized to sign it is immaterial.

Opinions Attorney General, 1920-1922, p. 137.

If the court audits and allows a claim not properly and legally chargeable on the county, or which it has no authority to allow, it exceeds the power with which it is entrusted and its act is ultra vires and void.

Commisisoners Court vs. Moore, 53 Ala. 25, 28. See also—Alston vs. Dunn, 176 Ala. 421, 58 So. 300.

The court in auditing and allowing claims against the county, acts in an administrative capacity **only**, and the allowance of a claim by such court is prima facie evidence **only** of its correctness.

Mobile Co. vs. Williams, supra.

A county treasurer pays out public funds "with fear and trembling." It is your business to know the law applicable to your duties and to know whether the act of the court is ultra vires.

The foregoing should be sufficient to guide you in such matters.

Of course, you are not chargeable with notice of the relationship of every person in the county to members of the court, but if such facts come to your knowledge, you must act accordingly.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 21, 1931.

Hon. Landon G. Smith,
Highway Director,
CAPITOL.

Civil statutes go into effect on approval by the Governor unless some other time is provided in the statute.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of April 17th to hand. You make the following statement:

> Senate Bill 83, amending Section 6 of Article No. 1 of the Highway Code, was approved by the Governor April 10, 1931.
>
> The bill does not state when this act takes effect.

You wish the opinion of the Attorney General as to when this Act became effective.

In reply will say that said Act became effective on the date of approval by the Governor.

The Act is a Civil Act, and no time for taking its effect is expressly fixed by the Act. In such a case, such a statute takes effect on approval. Rathbone v. Bradford, 1 Ala. 312; State v. Click, 2 Ala. 26; Weatherford v. Weatherford, 8 Porter 171; Branch Bank v. Murphy, 8 Ala. 119; Thompson v. Stickney, 6 Ala. 579; Taylor v. State, 31 Ala. 383; Montgomery Traction Co. v. Knabe, 15 Ala. 458.

A different rule prevails as to criminal statutes.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 24, 1931.

Hon. A. F. Harman,
State Superintendent of Education,
CAPITOL.

County Board—Settlement of Judgment—What funds.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of April 10, 1931, enclosing original of a letter from the County Superintendent of Education of Elmore County, addressed to me. This letter states the following:

> "In the year 1924 the district trustees of school district number fourteen, Elmore County, Alabama, entered into a contract with one W. J. McInish for the erection of a school building in that district for the

agreed price of $14,250.00. According to terms of the contract McInish was to furnish the material, pay for all labor and in short do a lock and key job. Two-thirds of the money was raised by local subscriptions and the balance was state aid money. The entire amount was put up with the County Board of Education of this county and the building was to be erected in accordance with the plans and specifications of the State Department of Education. McInish, the contractor, applied to one A. C. Greeson for credit for certain lumber and supplies to be used in the construction of said building. Later on McInish abandoned his contract and the Board employed said A. C. Greeson to complete it, for which he was paid in full. McInish failed to pay Greeson for a car load of ceiling and later went into bankruptcy. Greeson later demanded pay for this lumber of the Board, claiming that he appeared before the Board in person and the Board promised to pay for the material. The Board refused to pay. Greeson filed suit in the Circuit Court of Elmore County, Alabama, against the Board and when the case was finally tried on March 1, 1929, judgment was rendered in his favor in the amount of about $1632.00. A request for a new trial on the part of the defense was granted by the Circuit Court. Greeson appealed therefrom and on May 31, 1930, the Supreme Court rendered the ruling of the lower court and reinstated the judgment. This was the second appeal in the case and the report of the decisions may be found in 117 So. 163 and 129 So. 42.

"The County Board of Education now decides to carry out an agreement reached between it and said Greeson for the settlement of the judgment but are not certain as to what fund payment should be made from."

You request my opinion:

From what fund and in what manner should settlement be made?

In answer will state that if there is any balance in the building fund **for the particular building** concerning which the matter arose, payment should be made from that balance. If nothing remains in that fund, then payment should be made from the unpledged part of the district tax of the particular district in which the property was used. If there is no such unpledged district tax of that district, then out of the unpledged part of the special county three mill tax, and if none, then out of the bonus fund.

By "unpledged part" I mean such part of such funds not pledged to payment of warrants issued in accord with provisions of the School Code.

You cannot, of course, use the county one mill tax equalization or attendance fund for payment of this judgment since, by law, these funds are devoted to special and different uses.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 25, 1931

Hon. R. L. Shamblin,
Sheriff Tuscaloosa County,
Tuscaloosa, Alabama.

Sheriffs: fees in forfeiture cases.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of April 13, 1931 in which you request my opinion as follows:

"Is the sheriff entitled to the sum of $1.50 for serving notice on bondsmen where forfeiture has been taken?

It is my opinion he is entitled to this sum under Section 7287 Code of Alabama 1923. This section reads as follows:

"* * * serving summons or other mesne process and returning same $1.50."

It is true this section is found under schedule of fees in the Civil Code, Volume 3 and it is true that forfeiture has grown out of a criminal process, but in construing this matter, we must remember that as soon as conviction is had or a judgment is confessed or a forfeiture is taken, the enforcement of such judgment, confession, or forfeiture becomes a civil matter and the collection of the same is, likewise, a civil procedure and the fees in such matters are regulated by the law pertaining to civil procedure.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 28, 1931

Mr. E. C. Doody, Clerk,
Revenue & Road Commissioners,
Mobile, Ala.

Salaries of Clerk and Assistants in office of Board of Revenue or Court of County Commissioners not preferred claims.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of March 19, 1931 in which you state:

"Please advise me if the salaries of the clerk and assistants in the office of the Board of Revenue or Court of County Commissioners are not preferred claims."

In reply thereto, I advise you that in my opinion such salaries are not preferred claims. Subdivision 4 of Section 231 of the Code of Alabama of 1923 provides as follows:

"Compensation of the members of the court of county commissioners or boards of revenue; the compensation of the probate judge, the sheriff, tax assessor, clerk of the circuit court, jury commissioners and deputy solicitor for services performed by them, and authorized to be paid to them by law; and claims of the secretary of state for certified copies of field notes."

It therefore appears that only the compensation of the members of the Board of Revenue or Court of County Commissioners is preferred.

There is no other provision of Section 231 making salaries of their employees preferred claims, nor does the Act of Feb. 28, 1901, Acts 1901 p. 1842 creating the Board of Revenue of Mobile County make any such provision.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 28, 1931

Hon. B. Cooper,
County Treasurer,
Hamilton, Marion County, Ala.

Counties—Commissioners supervising road work—pay.

Gasoline Tax—Counties cannot anticipate—Warrants issued in anticipation void—Road machinery purchased on installment plan.

Sheriff's Fees—Lunacy proceedings.

Witness Fees—Lunacy proceedings.

Bastardy Proceedings—Costs how payable.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of April 15, 1931. You state the county has several persons maintaining the roads in the four districts of your county.

You request my opinion:

1st. Where a county commissioner supervises this work several days in the week throughout the month, is it legal for him to be paid therefor out of the general funds of the county or out of the gasoline tax fund of the county?

2nd. How many days may a commissioner be allowed to claim pay for such supervision or superintendance.

3rd. May the commissioners court legally issue interest-bearing warrants against the county gasoline tax fund to purchase road machinery or tractors to maintain the county roads? (You state such warrants have been issued and are soon due).

4th. Where the commissioners court has heretofore issued warrants payable out of the county gasoline tax fund, in case that fund is presently exhausted, may I register these claims against such fund and pay the same later when money is available therein?

5th. May the commissioners court purchase road machinery and pay a certain amount each month "as rent" for such machinery until same has been paid for?

6th. Under Section 7241, Code of Alabama, 1923, is the county liable for witness costs in "cases of inquisition or lunacy?"

7th. Referring to question number six, how would the Sheriff get his pay for summoning the jury and witness?

8th. In bastardy cases is the county liable for the costs of state witnesses?

9th. Referring to question number eight, how do the Sheriff and Clerk get their pay?

My answers to your questions are constructions of the **general** law.

Answering your first question:

The compensation allowed members of the commissioners court is prescribed by Section 6771, Code of Alabama, 1923. It is payable "out of the county treasury." It is not contemplated that such compensation be paid out of the gasoline tax fund, but out of the **general** funds of the county. Commissioners are entitled to receive—

> "the sum of three dollars per day while occupied in the discharge of their duties in letting out, **inspecting** and accepting, **building,** or **repairing,** of any **county bridges,** or county **buildings** or **works,** and five cents per mile for each mile necessarily traveled by them in so doing * * *"

But it is provided—

> "No allowance shall be made to any commissioner for per diem or mileage for inspecting roads, bridges, etc., except when acting under authority of an order of the commissioners court previously made."

The foregoing law requires a specific order by the court for the specific work at a specific time. In other words the order should not be a blanket one.

> Opinions Attorney General 1928-1930, pp. 65, 215, 851.
> Opinions Attorney General 1926-1928, p. 351.

This provision does not allow compensation to a commissioner for engaging in the actual work of building and repairing.

> Opinions Attorney General 1928-1930, p. 660.

Therefore, when the rulings outlined above are strictly followed, the members may be paid out of the general fund of the county.

Answering your second question:

The commissioner is entitled to claim compensation only for the time covered by the specific order.

Answering your third question:

If your county "bought, on credit, tractors, road machines, etc, and gave warrants on the gasoline fund to be paid when such fund subsequently received shall be sufficient for the purpose, the warrant issued on such gasoline fund would be void, but the debt against the county for the price of such machinery would constitute part of the debt (of the county * * *). If a warrant for such purpose is issued on the gasoline tax fund, the warrant is void for the reason that such debt cannot be paid out of the gasoline tax fund, but the debt against the county would be valid and payable out of other funds, when received."

> Opinions Attorney General 1928-30, p. 501.

Your exact question is answered by:

> Opinions Attorney General 1928-30, p. 502.

The reason for this is not that such fund may not be used to purchase machinery for repair and maintenance, but that "no warrants may be issued against an anticipated revenue to be received by the county from the gasoline tax levied by the State."

> Opinions Attorney General 1928-1930, p. 502.

In the use of this fund the law contemplates a strictly pay-as-you-go basis.

Opinions Attorney General 1928-1930, pp. 487, 535, 412, 674, 675.

Answering your fourth question:

The funds accruing to your county from the gasoline tax mentioned "cannot be used when received for the purpose of paying debts **previously contracted for any purpose.**"

Opinions Attorney General 1928-1930 p. 674.

> "It was not intended that such taxes should or could, be pledged in advance for the giving of credit, or be used at any time, for the payment of anything other than current expenses for maintenance and repair of roads, bridges and highways of said county."

Opinions Attorney General 1928-1930, p. 412, 487.

Warrants issued in anticipation of the fund are void. The debt should be paid out of other funds.

Answering your fifth question:

The commissioners court cannot buy road machinery on the installment plan out of the gasoline tax fund. It cannot obligate **anticipated** revenues in that fund.

Answering your sixth question:

Witnesses in inquisition proceedings in the probate court are entitled to seventy-five cents per diem, "to be taxed and collected the same as fees or compensation of jurors in such cases, as provided by Section 7293" of the Code. Reference to Section 7293 shows that such jurors are "paid on the certificate of the Judge of Probate, **out of the county treasury.**" The law is self-explanatory.

Answering your seventh question:

The sheriffs fees are paid out of the county treasury, "if such person have no estate." (Section 7287). If the person has an estate proper proceedings must be taken against the same to satisfy for the fees.

Answering your eighth question:

In case of an acquittal the costs should be taxed against the State. Such a matter comes within the provisions of Section 4039, Code of Alabama 1923, as amended by the Act of 1927.

Opinions Attorney General 1926-1928 p. 525.

In the event of a conviction defendant must give bond for the costs and support of the child or be sentenced to perform hard labor for the county for one year, and in that event, the **county is liable for the costs,** upon judgment rendered, execution issued and a return "no property found," and the earnings of the convict must be paid to the Judge of Probate for the support and education of the illegitimate child.

Sections 3427, 3428 Code of Alabama 1923,
Opinions Attorney General 1926-1928, p. 407.

Answering your ninth question, the method of paying all costs in such cases is set forth in answer to your eighth question.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 1, 1931

Hon. H. L. Stutts,
Judge of Probate,
Florence, Lauderdale County, Alabama.

Counties—Contributing to improvement streets surrounding county buildings—resolutions must be definite.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of April 7, 1931. In it you state the following:

"The Minutes of the Commissioners Court for September 16, 1919, state that the commissioners, on motion of W. P. Rice, seconded by H. M. Massey, unanimously voted "to go with majority of property owners as to any improvements on courthouse and jail property on said streets as adjoin county's property."

"The above refers to certain street paving done in 1919 or 1920 and paid for in 1920, 1921, 1922, 1923, and 1924, leaving a balance of installments amounting with interest to around $11,000.00 at this time. I find no record as to how much of this was to be paid yearly but am told by **city officials** that all was to be paid out in ten years.

"Due to an opinion said to have been handed down by Attorney General, court refused to pay after 1924 when four only of the pay-

ments had been made. Principal now with accrued interest six years later amounts to approximately $11,000.00."

Upon the foregoing statement you request my opinion:

Have I the right to pay above or is it compulsory that I do so?

My answer is in the negative.

It appears that whatever original action was taken by the Commissioners Court, as shown by the Minutes you quote, was taken on September 16, 1919, and that if this be all by which it is sought to show any undertaking on the part of that court, it is essential to know the law as it existed at that time, as well as any subsequent statutes which might attempted to give validity retroactively to its action if incomplete.

Your attention is invited, therefore, to the fact that Section 1367, Code of Alabama, 1923 was enacted as law September 22, 1915. That section is as follows:

> "The courts of county commissioners or like governing body of any county, with the consent or permission of the city council or governing body of any municipality, may establish, construct and maintain any road, street or bridge within the corporate limits of such municipality."
>
> (See also Sec. 175, Highway Act. 1927).

Sections 2256 and 2257 (originally part of an Act approved Nov. 1, 1921) provide the manner in which a **municipality** may take over streets or highways **theretofore** controlled by the county, for control, management, supervision, regulation, repair, maintenance, and **improvement**, and Section 2257 states what the resolution of the municipality shall contain and provides further that—

> "No such resolution shall become effective until and unless the **county** shall by appropriate action of its governing body **pay** or contract to pay such sum or sums as may be designated in such resolution."

Sections 2256 and 2257, supra, appear to have become law some years after the arrangement described in the Minutes of 1919.

In City of Huntsville v. Madison County, the Supreme Court in 1910, held action could not be maintained against the county to declare and enforce a lien on the county court house property for a special assessment levy for street improvements.

In that case the city sought to enforce a lien and thereby collect an assessment for the paving of a street in front of the court house. It was

held that the general power given **municipalities** to levy assessments for street improvements "is not sufficient to embrace the property of the State and County which is devoted to strictly public uses, nor authorize the enforcement of such special assessment against it under a general judgment against the county. In other words, property owned and held by the state and counties for public purposes, is generally exempt from taxation of any description, and is not to be deemed subject to taxation in any form, unless the intention of the legislature to render it so clearly appears."

This seems to be primarily the principle upon which that case was decided, and your case does not appear to raise any such question.—166 Ala. 389.

In Town of Eutaw v. Coleman, decided by the Supreme Court in 1914, the facts appeared to be—The **municipal** authorities of Eutaw, the seat of county government, **having in contemplation** the improvement of certain streets and sidewalks of the town, but unwilling or unable to pave the sidewalks on the four sides of the court yard square, or to improve so much of the circumjacent streets as lay between said sidewalks and the medium line of said streets, communicated these facts to the **Court of County Commissioners** with a view to the **latter** assuming for the county the expense of that part of the work which the **town** was unwilling or unable to undertake. It was **thereupon** "estimated and found by the court (of county commissioners) that the work **to be done** on the sidewalks and streets for the improvement of county property aforesaid is reasonably the sum of $4,116.12" **and the town of Eutaw was authorized** and **empowered to include and let to contract** the construction and laying of a cement sidewalk, ten feet in width on all four sides of the court house square, and to build and construct a road bed along such parts of said streets of material and according to plans and specifications adopted by the **municipal** authorities for the improvement of the streets and sidewalks of the town, and the sum of $3,000.00 **was appropriated** for said improvements, **payable to the town in ten annual** installments to bear interest from the completion of the work, and the judge of probate **was authorized,** on the completion of the work, to draw warrants upon the **county treasury in favor of the town** for said sums.

The court held, "in the circumstances shown," that **the commissioners court** had power and authority to appropriate county funds, not otherwise set apart by law, to the improvements of said streets.

The court, in its decision then referred to Section 5765 Code of Ala. 1907 (now Sec. 1347, Code of Ala., 1923, as re-enacted in Highway Act, 1927) as to the legislative, judicial, and executive powers of commissioners courts with regard to public roads, etc. It also referred to Act approved August 26, 1909 (Acts Sp. Sess. 1909, p. 303) now Secs. 6773-6775, Code of Ala. 1923.

189 Ala. 164.

The last decision involved facts which do not appear here to exist. The decision seemed to proceed on the theory that the **county** and **not the city** was the principal actor in the matter. The definite appropriation was made and the obligation occurred under a definite agreement with the city **prior** to the **commencement** of the work.

Opinions Attorney General Vol. 1, p. 317 (office Edition) 1925.
Opinions Attorney General 1924-26, p. 168.

This office has previously stated concerning this decision—

"The case of the Town of Eutaw v. Coleman, must, in my opinion, be confined to the facts of that particular case and even as to those facts to the period of time prior to the adoption of the Highway Code of Alabama. There was no agreement by a majority of the Supreme Court in that case to anything except that under the undisputed **facts in that case** payment by the County of the part of the cost, agreed upon prior to the commencement of the work, was permissible. In that case the court of County Commissioners agreed (and I might say **definitely**) to pay part of the cost of paving of the street adjoining the County Courthouse in order to have the improvement made."

Opinions Attorney General 1928-30, pp. 1011, 1012,
Opinions Attorney General 1924-26, p. 168.

In Smith v. Franklin County, et al, decided April 17, 1930, the facts upon which that decision is based are not fully stated, but I infer from what is stated that the commissioners court had a very **definite agreement** with the City of Russellville to contribute a part of the cost incurred by said city, in improving the streets adjacent to the county courthouse and jail; that the amount thereof was ascertained and adjudged and the county paid in accordance with the definite arrangement.

The court in deciding that the county authorities could continue to make its payments, as it had agreed, cited Town of Eutaw v. Coleman, supra, for authority as well as Sections 6773-6775 and 2252, Code of Alabama 1923.

127 So. p. 904.

The minutes of the commissioners court constitute the record of its actions and evidently, as quoted, the only authority on which it is proposed to pay the city of Florence for the work it has done.

The **maintenance** of streets of municipalities in Alabama is declared to be a county matter.

Section 6773.

And **for that purpose one-half** of the road-tax of the county collected in the municipality is paid over to that municipality and when so paid

"shall be **exclusively** for **maintaining** the streets in the corporate limits of such municipality; but if the tax is levied for any particular class of roads or highways, such sums shall be used on the streets of the municipality for roads of a similar character to such roads or highways."

There seems to be confusion as to the purpose of Sections 6773-6775. **Nothing is there said about the county constructing streets,** nor is there any question of discretion. The matter there covered is **maintenance,** and the **exact fund and exact amount** that the county is not only authorized to pay **but must pay for maintenance** is there set forth. That amount is paid **regardless of whether any paving is to be done around any courthouse.**

Undoubtedly it is permissible for a county through its commissioners court, by **definite** pre-arrangement, shown by its minutes, to contribute to the improvement of the streets surrounding the county's buildings in a municipality, but the agreement to do so must be **definite and not vague** on conjectural. There is nothing definite in the minutes you quote. No amount is specified. No time of payment of any amount is specified. In fact no undertaking is assumed to contribute thereto.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 1, 1931

Hon. H. H. Stewart,
Assistant Director,
State Board of Administration,
CAPITOL.

Final Record—In Circuit Court where appeal from conviction in criminal case in County Court—Contents.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of April 24, 1931. You call attention to Sections 3839, 6724 (9) and 10126, Code of Ala. 1923, and request my opinion.

1st. Where there is conviction in the County Court and an appeal therefrom to the Circuit Court and transcript of proceedings in the County Court prepared and transmitted to the Circuit Court, is it the duty of the Clerk of the Circuit Court to record this transcript in the Circuit Court and class such recording as final record?

2nd. In the event such transcript is to be recorded in the Cir-Cuit Court as final record, just what items would constitute such final record?

My answer to your first question is in the affirmative.

Opinions Attorney General 1928-30, p. 538.

My answer to your second question is the transcript with subsequent proceedings, except those items excepted in sub-division (9) of Section 6724, Code of Ala. 1923.

Where an appeal is taken from conviction in a criminal case in the County Court to the Circuit Court, the Clerk of the County Court makes a copy of the proceedings had in the County Court, except the subpoenas for witnesses and the appeal bond, certifies the same as correct, and hands the transcript, together with the appeal bond, to the Clerk of the Circuit Court, who places the same on the trial docket of criminal cases.

The "Transcript" contains only the affidavit, warrant, **appearance** bond, and the order of the court.

Opinions Attorney General (Vol. 19, p. 273, Off. Ed.) op. of Sept. 30, 1930, Ct. Gl. Clay Co.

As to what constitutes a final record in a criminal case in the Circuit Court in a case tried and convicted in the County Court and appealed to the Circuit Court, this question is answered substantially by Subdivision (9) of Section 6724, Code of Ala. 1923, which makes it the duty of the Circuit Clerk in criminal cases:

> "To record in a well bound book, within six months after the final determination of any suit or prosecution, all the proceedings relating thereto, **except** the **subpoenas**, affidavits for **continuance, commissions to take testimony, the evidence and executions.**"

The matters excepted constitute no part of the final record in the Circuit Court, nor in the County Court, for which a clerk receives fees or compensation for recording.

The "transcript" which the clerk of the County Court is required to hand to the Circuit Clerk on an appeal from the County Court to the Circuit Court constitutes a part of "the proceedings relating thereto" as that expression is used in subdivision (9) of Sec. 5724, supra. It must be recorded in the final record in the Circuit Court, together with all that is subsequently done in the Circuit Court "except the subpoenas, affidavits for continuance, commissions to take testimony, the evidence, and the executions."

By Section 10126, Code of Ala. 1923, "orders, judgments, and decrees entered upon the minutes of the Court are parts of the record of the causes to which they pertain, and need not be copied into the final record. If so copied, no fee shall be charged therefor."

The above applies to criminal as well as civil cases.

Carmichael v. Matthews, 134 Ala. p. 210.

It applies in the County Court as well as in the Circuit Court.

Opinions Attorney General, 1928-30, pp. 558, 560.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 1, 1931

Hon. H. H. Stewart,
Assistant Director,
State Board of Administration,
CAPITOL.

Costs—Sentence for—when mandatory.

Costs—No fraction of a day in a sentence for.

Costs—Resentencing for where error in judgment.

Circuit Clerk—Liability for costs in certain errors.

Witness fees—Local Acts fixing—unconstitutional.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of April 16, 1931. You request my opinion:

"1. Is it mandatory that a defendant be sentenced to a sufficient number of days at 75c per day to pay the full amount of costs where the judgment of the court is $10.00 fine, $45.15 costs, and same are not presently paid or judgment therefor confessed.

"2. In sentencing a defendant for cost, should a day be added for a fractional part of 75c. For instance the total cost is $45.25 and at 75c a day 60 days will pay $45.00, should he be sentenced for one day to pay the 25c, making total of 61 days for costs.

"3. In the event transcript shows total cost $45.25 and sentence to pay same 50 days, would it be proper to return transcript for correction as to days in lieu of amount wherein defendent will serve the proper number of days at 75c to pay the total costs.

"4. In the event the clerk fails to charge the defendent the proper amount of costs on conviction as per sections 3734-3773 Inc., and the sentence for costs is thereby not sufficient to pay all of the proper costs, would the clerk be liable on his official bond for the amount not charged and paid by defendant in cash or labor.

"5. In the event a local law has been passed whereby State witnesses are paid more or less than the allowance for State witnesses under Sections 3762-3773 Inc. would it be mandatory that the fees and compensation of witness as allowed under the above quoted sections be charged to the defendant upon conviction and paid in cash or by hard labor. Along this line attention is called to rulings of the Attorney General 1928-1930, pages 427 and 428."

In answer to your first question will state that where a fine is assessed the court may allow the defendant to **confess** judgment, with good and sufficient sureties, for the **fine and** costs.

(Section 5288, Code).

But, if the fine and costs are not paid, **or a judgment confessed** for the fine and costs as above stated, the defendant **must** either be imprisoned in the **county jail, or, at the discretion of the court,** sentenced to hard labor for the county **for the fine** in accordance with the schedule fixed in Section 5290, which Section applies only to sentences on account of the **fine.**

Williams v. State, 55 Ala. 166,
Ex Parte Hill, 122 Ala. 114, 26 So. 230.

And, if, on conviction, judgment is rendered against the accused that he perform hard labor for the county, and **if the costs are not presently paid or judgment confessed therefor,** as provided by law then should impose additional hard labor for the county for such period, not to exceed ten months, as may be **sufficient** to pay the **costs,** at the rate of seventy-five cents per day, in accord with Sections 3688 and 5291, Code of Alabama, 1923.

The word "may" in Sections 3688 and 5291, supra, in my opinion means "must" and it is my opinion the Court should sentence for the whole costs, provided the sentence for costs shall not exceed ten months at the prescribed rate.

Shackelford v. State, 204 Ala. p. 363,
See also 28 Ala. p. 28,
9 Porter, p. 390,
33 Am. Dec. p. 320,
17 Ala. p. 527,
3 Ala. p. 303.

In answer to your second question it is my opinion that the defendant when sentenced for costs should be sentenced for a full day for any fractional part of the seventy-five cents. I know of no provision of law on the subject of your inquiry recognizing a fractional part of a day.

In answer to your third question where the sentence is for an incorrect number of days the transcript should be returned for modification of the judgment provided thirty days from the date on which the judgment was rendered have not elapsed.

Section 6670, Code of Ala. 1923, and cases cited.

The answer to your fourth question is in the affirmative.

Answering your fifth question will state that this office has heretofore held that a local law fixing the fees of state witnesses at a different per diem and providing a different mileage than the general law provides is unconstitutional or violative of Section 96, Constitution.

Opinion of the Attorney General 1928-1930, p. 427.

Therefore, the schedule of fees provided by the general law controls.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 5, 1931

Hon. Watkins M. Vaughan,
Judge of Probate,
Selma, Dallas County, Ala.

Cotton warehouse trucks are not trailers under Revenue Act of Sept. 13, 1923.

Opinion by the Attorney General.

Dear Sir:

I have received your letter asking for an opinion from this office on whether or not certain warehouse trucks were liable for a license tax under the provisions of an Act approved Sept. 13, 1923, relating to and to further provide for the revenue of the State of Alabama, etc.

From your letter I understand that these cotton warehouse trucks are principally used to transport cotton from one part of a cotton warehouse to another and are hauled by an automobile truck or tractor and to take the place of hand trucks formerly used in cotton warehouses and operated

by man power; that these trucks are not adapted for use on highways, but can only run indoors on platforms or on paved streets and that their use on streets is merely incidental in going from one warehouse to another. The trucks which you mention are less than twenty-five inches high, have small wheels not over twenty inches in diameter, have no motive power and are run in trains or fleets, several coupled to each other. Your description and catalogue showing the type of trucks enclosed with your letter shows the Atlas Easy Loading Cotton Trailer and the Atlas Flexible Trailer, pictures of which I have examined.

Section 17 of the Act of Sept. 13, 1923, with reference to trailers, provides as follows:

> "Section 17. 'Trailers.'—The following registration fee shall be collected for operating trailers to motor vehicles on the highways of this State. For each trailer drawn by a motor vehicle, one-half of the license required for the motor vehicle drawing such trailer."

and Section 18, with reference to motor tractors, is in the following words:

> "Section 18. 'Motor Tractors.' For each motor tractor used on the highways of this State, shall be paid a license or privilege tax of one hundred dollars. Provided, however, that this license shall not be collected for a tractor when run on a highway to be transferred from one point to another for use on a farm, or when used on the highway for transferring what is commonly known as a 'portable saw mill' or a 'well boring outfit.'"

It is my opinion that the cotton warehouse trucks above described are not liable for the registration fee for operating trailers to motor vehicles on the highways of this State specified in Section 17 above copied. Section 18 of the Act in mentioning incidental use of highways by a tractor and tractors used to transport "portable sawmills" and "well boring outfits" strengthens by conclusion that it was trailers which were usually or commonly used on highways that the lawmakers had in mind in adopting Section 17.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 5, 1931

Hon. A. F. Harman,
State Superintendent of Education,
CAPITOL.

Schools—Fees in—Method of enforcing payment.

Use of property for other than school purposes.

Opinion by Assistant Attorney General McCall.

Dear Sir:

Mr. R. D. Trest, Atmore, Alabama, has written the following letter under date of March 23, 1931.

> "We have one boy in seventh grade who can't get his monthly report card since X'mas. because we are not able to give $5.00 tuition since X'mas. I paid $5.00 before X'mas., and a few days ago one of the teachers told him if he didn't pay his $5.00 she and the school would not pass him to the eighth grade and that his year's work will not be any good. His daily average is 85-90 in all his studies and then on his monthly report they hold him down to 75. * * * * We have three boys in school, two in grammar school, grades four and six. I have not had a job since last June that will hardly feed the family. If I had a job I don't mind paying the school. But with $1.50 a day or $2.00, I can't feed seven children and pay other things too. The school gives plays and makes $300.00 to $500.00 each play. If the State can't pay the teachers, then the teachers try to force people to pay tuition job or no job."

Upon this statement you request my opinion:

1. Has the teacher any right to refuse the boy his grades because his parents cannot or will not pay the fee where the child is not over sixteen years of age?

2. Would there be any difference if the child is now over sixteen years of age.

3. I also request your opinion as to whether or not a private school or quasi-private school can be conducted under the auspices of public school trustees, county or city Boards of Education or if public schools buildings can be used for private school purposes.

My answer to your first question is in the negative.

My answer to your second question is in the negative.

My answer to your third question is in the negative.

I call your attention to the fact that, in law there is a difference between "Tuition fee" in any public school and in shop work.

Public school authorities have no right whatever to charge and collect a "tuition fee" in any public school in Alabama.

Roberson v. Oliver, 66 Southern 645.
Hughes v. Outlaw, 73 Southern 16.

The cases cited are decisions of the Supreme Court of Alabama.

A "tuition fee" is a price charged or payment made **for instruction.** Webster's International Dictionary.

Under decisions of our courts the public school authorities cannot charge a fee **for instructing** a pupil in the public schools, nor can they require **such a fee** as a condition **precedent** to entering and remaining in the school and any teacher who dismisses a pupil from a public school because that child or its parent fails or refuses to pay a fee the proceeds of which are to be used to pay teachers' salaries, is liable in damages on suit properly instituted.

Williams v. Smith, 68 Southern 323.

The above is also an Alabama Supreme Court Decision.

A "matriculation fee" is a fee charged to admit one to membership in school by enrolling the person's name in a register. Webster's International Dictionary.

A **matriculation** fee is not chargeable in the public elementary schools of the State. Furthermore, under the guise of a fee for **matriculating,** the public school authorities could not collect a fee to teach the pupil.

An "incidental fee," as heretofore stated, differs from a "tuition" and a "matriculation fee." An "incidental fee" is a fee charged and collected for use exclusively in taking care of the necessary **incidental** expenses of the **particular** school in which charged. It is for the payment of such items as for light, water, fuel and heating, and by statute may be used for repairs to the school, improvement of the grounds, and insurance of the particular school property.

It cannot be charged to buy a new schoolhouse or new school land, or can it be charged and payment forced **as a means to paying any part of the teachers' salaries or to supplement any teacher's salary.**

An "incidental fee" must, in any event be reasonable. In other words the assessment must not be for more than the pupil's proportionate share of the total incidental expenses of the particular school. Such a fee may be fixed and collected by the local board of trustees of the particular school on first having the approval of the County Board of Education. The fact of approval must first appear in the **written** minutes of the County Board of Education, or else the local trustees cannot demand payment. The fee is collected by the principal teacher of the school and that teacher is the custodian of the incidental fund, must keep an accurate account of same, and cannot spend any of it or pay it out except on the order of the local board of trustees, and must make a yearly report of receipts and disbursements in such incidental fund to the County Board of Education.

Section 182, Alabama School Code, 1927.

On several occasions our Supreme Court construing the old school laws as they existed prior to the compulsory school attendance law of September 15, 1915, held that the public school authorities might require a reasonable "incidental" fee for heating and lighting the schoolhouse as a condition precedent to admitting a child to instruction in a public school, where it was shown that the fee was for the **sole** purpose above mentioned, and **was not to be used to pay teachers' salaries.** But it must be remembered that all these court decisions were interpretations of the school laws as they existed prior to the compulsory attendance law.

Bryant v. Whisenant, 52 Southern 525,
Roberson v. Oliver, 66 Southern 645,
Williams v. Smith, 68 Southern 323,
Ryan v. Sawyer, 70 Southern 652,
Hughes v. Outlaw, 73, Southern 16.

And in 1926, our Supreme Court held that the County Board of Education had a right to prescribe a **reasonable** method for raising and collecting a sufficient fund by a reasonable incidental fee to be used for the purpose of heating and lighting school rooms of the different schools of the county and to delegate that authority to the boards of trustees of the different schools. However, in that case there was no effort shown by the public school authorities to prescribe that the payment of such a fee should be a condition precedent to instruction, as was the situation arising in some decisions rendered a decade before under the Code of 1907. So, therefore in that decision of 1926 the court did not have before it the same situation as in Bryant v. Whisenant, which involved a construction of Section 1678-1992, Code of Alabama, 1907 no longer in existence. Neither did the court have before it a consideration of the requirements of the **compulsory attendance** law.

Kennedy v. County Board, 107 Southern 907.

Recently the Supreme Court decided that a law authorizing County Board of Education to authorize the collection of a reasonable incidental fee is not violation of the constitution.

Vincent v. County Board of Education.

Without doubt the County Board of Education may authorize the local board of trustees to collect a reasonable incidental fee from each pupil in the school for the purpose mentioned hereinbefore. And, without doubt, the local board of trustees may sue the proper party for the fee **and thus** compel payment where the party sued is able to pay it.

But this authority to fix the fee and by suit at law to compel able persons to pay it does not now, in the light of the new school laws, permit the public school authorities to expel the child from school, refuse it admittance, or subject that child to any pains or penalties whatsoever for

non-payment of the fee. They cannot legally refuse the child promotion, report cards, or properly earned grades or any of the other privileges and rights of free education because of non-payment of the fee. The recourse is not against the child either directly or by indirection, by resort to such methods. The only recourse the public school authorities have is by suit at law against the party upon whom the fee is a legal obligation and they cannot ignore the plain and adequate legal remedy by resorting to punishment of the child.

Under the more enlightened system for public education, the State, by its new laws, takes the position that, in a great measure, children between the ages of seven and sixteen years, are wards of the State for educational purposes. Each such child is compelled by law to attend some school for the entire length of the school term in each scholastic year. (School Code, Section 301).

Exemptions are allowed only to certain children under certain conditions. (Section 304).

The parent, guardian or other person in control or charge of such child who fails to cause the child to enroll in and attend school is punishable by both fine and imprisonment. (Section 305) Delinquent children may even be sent to the reformatories (Section 307). Attendance officers and courts are provided for that purpose. (Section 315) And it is definitely stated in the law that one of the objects of these various statutes is:

> "to secure the prompt and regular attendance of pupils." (Section 321).

Even the violation of rules and regulations of the State Board of Education to effect these purposes is punishable by fine and imprisonment. (Section 322) Furthermore, subsection (b) of Section 306, School Code, substantiates my position because it clearly indicates a parent, guardian or other person in control of a child who is unable to provide that child with necessary books and clothes in order that it may attend school and who, at the proper time, makes this known to the Juvenile Court of the County and offers to turn the child over to the Child Welfare Department of the State cannot be convicted of failure to send that child to school. Following along on the same theory this office has heretofore ruled that children who have been declared wards of the State by the Juvenile Court and placed in boarding houses at the expense of the county shall be furnished with their school books and tuition and same is a valid claim against the county treasury.

> Opinion Attorney General October 7, 1930 to Board of Revenue, Montgomery, County.

I call your attention also to the fact that the law now provides further that no teacher shall dismiss a pupil during school hours, even for those things for which a dismissal might be allowed, without the consent of the

board of trustees or the County Superintendent of Education except in case of an emergency. (Section 181). I also call your attention to the fact that the law provides the school shall be "free" to all children over six years of age. (Section 124).

It is also provided that though a City Board of Education may collect a reasonable incidental fee—

> "Such fee shall not operate to exclude from school any pupil between the ages of seven and sixteen years during the compulsory attendance period." (Section 218).

And while a similar provision as to County Boards was in the compilation of the School Laws of 1924 (Section 99) and was omitted from the School Code of 1927 (Section 124), yet it stands to reason that a discrimination could not have been intended between children attending city schools and those attending county or rural schools. The spirit and purpose of the law has been to let nothing of the nature of an incidental fee effect the child's exclusion from a public school.

So it is clear that under any and all conditions, with the exception of the specific instances heretofore mentioned it is mandatory that every child in Alabama between the ages of seven and sixteen years regularly attend school, not for a few weeks or months, but for the entire length of the school term in each scholastic year. It is likewise clear that it is the duty of the parent, guardian or other person in control of the child, where able to do so, to equip that child with the necessities for such school attendance.

If the child is uncontrollable it may be dealt with by law. If the parent or guardian fails or refuses when able, to perform his duties he may be prosecuted and punished. The parent or guardian must, when able, pay the "incidental fee" if it is reasonable and is really for incidentals of the school. This is a type of necessity for which the parent or guardian is responsible, when able to bear it, and it is no more the legal obligation of the child than is its clothing and food. The public school teacher has no more right to deprive the child of its grades, report cards and promotion because of its parent not paying the fee than that teacher would have to keep the child from warmth in the winter months because its parent had not helped pay for providing the fire that heated the schoolroom. Nothing of this sort shall stop the progress of the child.

The sole and exclusive method of enforcing payment of an incidental fee is by suit at law against the parent, guardian or person in control of the minor, and no teacher, trustee, or other public school officer, because of expediency or because the visitation of penalties on the helpless minor appear the easier and more method of compelling financial contribution by the parent, can ignore the lawful method of compulsion of payment by the parent, guardian or person in control which is a suit at law, and any teacher, trustee or other school officer who deprives a child of its school rights and privileges and prevents it from meeting its duties by such indirect methods is doubtless answerable in damages.

Public School buildings are to be used only for **public** school purposes, except that, as authorized by Section 187, Ala. School Code, 1927, the local board of School Trustees may allow the building or buildings to be used for **civic, social, recreational** and community gatherings, as in its opinion do not interfere with **"the principal use"** thereof. Nothing is here said about authority to conduct a private or quasi-private school in a public school house and I assume that if the legislature had thought such authority advisable it would have granted it. Not having done so, such action is not allowable.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 7, 1931

Hon. D. R. Boyd,
Deputy Solicitor,
Randolph County,
Roanoke, Alabama.

Trial tax chargeable for each case "that goes upon the docket."

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of May 1st, in which you state:

"The Roanoke Banking Company is being liquidated and a number of petitions have been filed in our Circuit Court for the purpose of compounding and compromising debts due the bank and for the sale of real and personal property belonging to the bank as provided by Section 6307.

"These petitions are filed in the name of the Superintendent of Banks and notice as prescribed is given to the Roanoke Banking Company. So far this bank has acknowledged notice and waived any and all other process prescribed or required.

"Our Circuit Clerk is not certain whether this entire procedure is to be considered as one case and therefore only one trial tax charge of $3.00, or whether, on the other hand each of these several and numerous petitions are to be considered a distinct case and such trial tax charged as to each petition. Will you kindly furnish us an opinion in this matter so that we may advise our Circuit Clerk?"

In reply thereto I beg to advise that in my opinion this is answered by Section 4½, Acts, 1919, page 282, which provides as follows:

"That a trial tax of $3.00 be, and the same hereby is, imposed **in each case,** civil, criminal, and equity, which hereafter **goes upon the docket** of any circuit court in this State. * * *"

In my judgment the words "in each case" and "goes upon the docket" should settle the matter for you.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 8, 1931

State Tax Commission,
CAPITOL.

Senate Bill 196, approved April 4th, 1931, is in contravention of Section 100 of the Constitution of the State of Alabama and is void.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Receipt of your letter of April 10, 1931, is acknowledged.

You ask my opinion as to certain features of Senate Bill 196, approved April 4th, 1931, and its constitutionality, as follows:

1st. The law, prior to the enactment of this bill, required the Tax Collector to make final settlement with the State Auditor on or before the first day of July of each year, and provided that the Collector must report on oath to the State Tax Commission and to the Court of County Commissioners or other Court of like jurisdiction, at the June term thereof his "list of insolvents" and his list of errors. You ask to be advised how the filing of the lists of errors and insolvents heretofore required to be filed in June by Section 213, page 282, Acts 1919, should be handled since the enactment of said Senate Bill 196, approved April 4th, 1931.

2nd. Section 5 of said Senate Bill 196, provides that it shall be the duty of the Collector to sell first real estate, whether or not personal property can be found, in case it is necessary to sell any of the property in order to collect the taxes due by a taxpayer. You ask to be advised whether or not the enactment of said Bill 196 gives authority to the Probate Court to render a decree for the sale of real estate when the Collector does not show that personal property has been exhausted?

3rd. If on the sale of the real estate of a taxpayer as provided by said Bill 196, the proceeds of sale are not sufficient to pay the taxes due by such taxpayer and the costs, can the Tax Collector then levy on his personal property for the balance on the taxes, interest and costs?

4th. Section 242 of Act, 1919, page 282, provides that the Tax Collector must deliver to the Judge of Probate on or before the first day of March his docket of lands on which taxes are not paid. Section 243 of the same Act provides that the Judge of Probate shall issue notices as speedily as practicable to each person so docketed, and, if the person so docketed is a non-resident of the County and has no agent therein, or the assessment is to "owner unknown," such notice is required to be given by publication or posting notices for three weeks. Section 249 of said 1919 Act requires service to be perfected ten days before the commencement of the term of Court to which it is returnable. By Section 250 of said 1919 Act, it is provided that after the decree of sale is rendered, the Collector shall give notice for thirty days before the day of sale by publication or by posting written notices.

Under the provisions of Senate Bill 196, the Collector cannot place on the docket those assessments of Fifty Dollars or less or those of Fifty Dollars or more where the required partial payment has been made, until after August First. Yet by said Act 196, the Tax Collector is required to make a final settlement with the Auditor by September 30th. In the case of non-residents, the advertising of notice of filing delinquent lists and notices of sale will require approximately sixty days, while the service must be perfected ten days before the term of Court at which decree is rendered.

You desire to be advised what settlement shall the Collector make with the Auditor for those cases in which he has been unable for want of time to complete the sale?

5th. A number of Tax Collectors, on the date when said Bill 196 was approved—April 4th, 1931—had already filed their delinquent dockets with the probate courts, as required by law, and notices had been issued by the probate courts and a day set for the hearing of the cases, as provided by said 1919 Act.

You desire to be advised, whether or not, the enactment of said Act 196 prohibits the Judge of Probate, in such cases, from rendering a decree of sale, (1) if the taxes and interest amount to fifty dollars or less, (2) if the taxes with interest exceed fifty dollars and the taxpayer makes payment of one-half the amount before the decree is rendered, (3) if the taxes and interest amount to more than fifty dollars and no partial payment is made before the day set for hearing, although the thirty days have not expired since the approval of the bill?

6th. If no decree in either case can be made, how is the Court costs, including the bill for advertising to be paid?

7th. Does Section 6 of said Bill 196, which provides that "he shall be charged interest at the rate of eight per cent per annum from the date of the sale of said land up to and including the date of redemption on the amount of money for which the lands were sold at said sale," cover all charges to be made on redemption, or does Section 291, page 282, Acts 1919, still control the amount of charges on redemption?

8th. Is it your opinion that said Senate Bill 196 is constitutional?

In reply will say that an answer to your last question naturally comes first. Section 8 of said Senate Bill 196, provides:

"That should any provision of this Act be declared unconstitutional, such invalidity or unconstitutionality shall not affect any of the other provisions of this Act."

This provision, in my opinion, is without any practical benefit to any part of the Act. The legislative purpose and the effect of the Act, if valid, is to postpone to August 1st, 1931, the obligation or liability of each of certain taxpayers, upon conditions named, who were delinquent in the payment of taxes on January 1st, 1931, and who had not paid such taxes on April 4th, 1931. Most of the taxpayers, on April 4th, 1931, had paid their taxes, as provided by law. All the **advalorem** taxes collectible in the fiscal year—October 1st, 1930, to October, 1931,—had been duly levied and assessed and had either been paid as provided by law, or were delinquent.

In this situation, Senate Bill 196 was passed for the purpose of postponing the obligation or liability of such delinquents to August 1st, 1931.

Section 100 of the Constitution of Alabama, 1901, provides:

"No obligation or liability of any person, association or corporation held or owned by this State, or by any county or other municipality thereof, shall ever be remitted, released or postponed, or in any way diminished, by the Legislature, nor shall such liability or obligation be exchanged or transferred except upon payment of its face value; provided, that this section shall not prevent the Legislature from providing by general law for the compromise of doubtful claims."

In the case of Perry County v. Selma, Marion and Memphis R. Co., 58 Ala. 546, it is held, as shown by the 12th headnote:

"The levy and assessment creates a legal liability on the taxpayer to pay, which, according to the preponderance of authorities, may be enforced by an action at common law, unless the statutes provide an exclusive remedy."

The statute in question, approved April 4th, 1931, had for its purpose the postponement of obligations or liabilities of persons, associations, and corporations to pay to the State of Alabama, to the several counties and to the several cities of Alabama, taxes duly levied that had been assessed during the previous tax fiscal year, became delinquent January 1st, 1931, and had not been paid April 14th, 1931. Such taxes were clearly obligations or liabilities of such taxpayers, whether persons, associations or corporations, and by the provisions of Section 100 of the Constitution, could not be postponed by the Legislature, as said statute undertakes to do.

There has been much discussion among law writers as to whether taxes which have been levied, duly assessed and are delinquent in payment is a "debt" within the legal meaning of that word; but no where, that I have been able to find, has it been doubted that such tax due the State, county or municipality, constituted an obligation or liability of the person, association or corporation to whom it is assessed. It will be noticed that Section 100 of the Constitution does not use the word "debt" anywhere.

All debts are obligations or liabilities, but all liabilities or obligations are not debts, in the strict sense of the word. Section 100, in my opinion, carefully avoids the use of the word "debt," as the meaning was not sufficiently comprehensive and clear to cover taxes which had been levied, assessed and had become delinquent in payment. Neither, in my opinion, can it rationally be held that such taxes are not owned or held by the State, county or municipality. As stated in said case of Perry County v. Selma, Marion and Memphis R. Co., the levy and assessment creates a legal liability on the taxpayer to pay, which may be enforced by an action at law, unless the statutes provide an exclusive remedy for its collection.

It was the intention of the framers of the Constitution, in my opinion, to pay the current expenses of the State, counties and municipalities, during any fiscal year (which begins October the first of one year and ends September 1st of the year succeeding) out of the proceeds of obligations and liabilities due to be paid to the State, county or municipality during such fiscal year except where otherwise provided. The main part of this income is from taxes payable by persons, associations and corporations during such fiscal year. Liabilities and obligations of the State, county or municipality are incurred with reference to this income. Section 100 of the Constitution was, in my opinion, intended to guard the means of obtaining the money out of which such payments might be made, as well as for other purposes.

As long as there is money collectible during such fiscal year, out of which liabilities and obligations created for such fiscal year can be paid and are paid, there is, in my opinion, no debt of the State in contemplation of Section 213 of the Constitution as to such fiscal year.

From the foregoing considerations, I am clearly of the opinion that Senate Bill 196, approved April 4th, 1931, is in contravention of Section 100 of the Constitution of the State of Alabama.

An answer to other questions propounded is unnecessary, if not impossible.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 8, 1931

Hon. Wm. F. Feagin, Director,
State Board of Administration,
CAPITOL.

Witnesses—U. S. Court compelling attendance of State convict as witness.

Expenses—How paid.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of April 30, 1931. In it you state the following:

A subpoena has been served on a Warden of the penitentiary commanding him to have the body of Howard Winchester, a convict, before the District Court of the United States for the Rome Division of the Northern District of Georgia in Rome, Georgia, on May 18, 1931, to testify as a witness in a case pending in the District Court of the United States.

The subpoena to which you refer reads as follows:

"IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE NORTHERN DISTRICT OF GEORGIA, ROME, DIVISION,

THE PRESIDENT OF THE UNITED STATES OF AMERICA, TO THE WARDEN OF THE STATE PENITENTIARY, AT SPEIGNER, ALABAMA,

GREETING:

YOU ARE HEREBY COMMANDED, That you have the body of HOWARD WINCHESTER, by whatever name he may be known or called, now in prison, under your custody, as it is said, under safe and secure conduct, before the Honorable the District Court of the United States, for the Rome Division, of the Northern District of Georgia, at the United States District Court Room, in the Post Office Building, in the City of ROME, GEORGIA, at TEN (10:00) IN THE FORE-

NOON, on the EIGHTEENTH (18TH) DAY OF MAY, A. D., 1931, then and there to testify the truth, according to his knowledge, in certain causes pending in said Court, wherein THE UNITED STATES OF AMERICA is Plaintiff, and JAMES W. POORE, and others, are Defendants, said testimony to be given on behalf of the United States, and immediately after the said HOWARD WINCHESTER shall then and there have given his testimony that you return him, the said Howard Winchester, to said Penitentiary, under safe and secure conduct.

Herein fail not, and have you then and there this Writ with a return of your actings and doings thereon.

WITNESS THE HONORABLE E. MARVIN UNDERWOOD, Judge of the District Court of the United States for Northern District of Georgia, and the seal of the said District Court, at Atlanta, Georgia, this the 22nd day of April A. D., 1931.

O. C. FULLER, Clerk of the District Court of the United States, for the Northern District of Georgia,
(Signed) By Jon Dean Steward.

(JON DEAN STEWARD) Chief Deputy Clerk."

You request my opinion:

(1) Please advise whether the Convict Department must comply with this order.

(2) If it is under legal obligation to comply with the order, who pays the expense of a guard and of the convict in going to and from the trial. It would be necessary to have a guard in charge of the convict during the entire time that he would be in Rome, Georgia, and to have a guard to return the convict to the penitentiary.

My answer to your first question is in the affirmative.

Section 3919, Hughes Federal Practice, Jurisdiction and Procedure, Vol. 6, 1931 edition.

In answer to your second question will state all such expenses are borne by the United States Government.

You are technically the warden of the prison in which the convict is confined.

The paper served on you is what is known in law as a writ of "habeas corpus ad testificandum."

Such a writ and its purpose is explained in Section 3919, Hughes Fed. Practice, etc., as follows:

"A writ of habeas corpus ad testificandum is not the high prerogative writ of habeas corpus, the great object of which is deliverance from unlawful imprisonment, and which either a court, a justice, or a judge may grant and adjudicate, but is a descendant of the ancient common-law precept to bring a prisoner into court to testify. Its purpose is not to institute an inquiry into the cause of restraint of liberty but its object is analogous to that sought to be attained by directing a subpoena duces tecum to the custodian of an evidential document. If the desired witness is confined in jail or in a state hospital for the criminal insane, a subpoena would be of no avail, since he could not obey it, and his custodian would lack authority to bring him. So a writ to the custodian is necessary, ordering the prisoner to be brought to give testimony."

In re Thaw, Ann, Cas. 1915 D, 1025 and note thereto.

The prisoner remains in your custody throughout the time.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 8, 1931.

Mr. John C. Curry, Chief Clerk,
Ad Valorem Tax Department,
State Tax Commission,
CAPITOL.

(1) Board of Review cannot make Blanket reduction of assessments on percentage basis but must pass on each assessment.

(2) If such order has been made it is nullity and it is duty of Tax Assessor to enter on his books the values existing before such order.

(3) Where assessor enters values contrary to law, on books of assessments, Tax Commission authorized to correct such books by entering proper values.

(4) The Board of Review has no authority to change a valuation approved by the Tax Commission.

(5) Where assessments have been so approved Tax Assessor should enter on books such valuations.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state as follows:

"The Board of Review created by Section 50, page 152, Acts 1923, is required to meet on the second Monday in April and to remain in session not later than the first Monday in May, and at such meeting shall review, revise, correct and fix the assessment values made by the tax assessor by raising or lowering the assessment of any person, partnership, corporation or association, except such assessments as have been approved by the State Tax Commission, as to any or all of the items of his assessment, in such manner as to secure the assessment of property at sixty per cent of its fair and reasonable market value' * * * 'It shall be the duty of the Board of Review to meet on the second Monday in April and sit as long as may be necessary to carefully examine and inspect all tax returns and assessments delivered to it by the county tax assessor.' (Sections 54 and 55, page 152, Acts 1923)"

"Has such Board of Review the right to adopt a resolution at such April meeting which has for its purpose the reduction of the assessed value of all taxable property or all property of any one class contained in the assessments delivered to it by the assessor, by a fixed percentage? In other words, does the law require the Board of Review to take each assessment delivered to it by the assessor separately and pass upon the values on that particular assessment, or can the Board issue a blanket order or adopt a blanket resolution directing a change in all assessments, the change in each to be a certain per cent of the total?

"In answering this question, bear in mind that Section 36, page 152, Acts 1923, provides that real estate and improvements 'shall not be be assessed for taxation at a less valuation (than for the preceding tax year) unless upon evidence submitted to the Board of Review, as provided for herein, it is found that the assessed valuation of the property reviewed should be reduced.

"If you advise that a Board of Review has no authority to adopt a blanket resolution affecting all assessments before it by increasing or decreasing each on a percentage basis, and it is found that a Board of Review has already adopted such a resolution, what values should the assessor enter upon his tax books, those existing before such action of the Board of Review or those which are ordered by the Board of Review?

"If you state that the values to be entered are other than those ordered by the blanket resolution of the Board of Review and the assessor enters those ordered by such resolution of the Board and the State Tax Commission fails or refuses to approve the book of assessments or abstract of the assessor in accordance with Sections 43

and 44, respectively (Acts 1925, page 152), on what values should the tax collector base his collections?

"Has the Board of Review the right to adopt a resolution affecting the assessed value of any property contained in an assessment which has been approved by the State Tax Commission or its agents or assistants as provided by Section 35, page 152, Acts 1923?

"If you state that the Board has no right to take action affecting such approved assessments, and it is found that a Board of Review has already taken action tending to affect such approved assessments, what values shall the county tax assessor use on his books, those approved by the State Tax Commission, its agent or representative or those fixed by the Board of Review?"

Your first question in brief asks if the Board of Review is authorized to make a blanket reduction in assessments or does the law require the Board of Review to pass on the assessments separately.

In answer thereto, I call your attention to Section 50, Acts 1923, page 152 (Section 180, 1929 Revenue Compilation) (and hereafter for purposes of brevity "Section number" will refer to Acts of 1923 and numbers in parentheses will refer to Section numbers 1929, Revenue Compilation.) This section creates a Board of Review whose duties "shall be to **inspect, review, revise, and fix** the valuation of all property returned or listed with the Tax Assessor for taxation each year." Section 54 (184) provides in part that the Board of Review "shall **review, revise, correct** and **fix** assessed values made by the Tax Assessor by raising or lowering the assessments of any person, partnership, corporation or association **except such as have been approved by the State Tax Commission,** as to any or all of the items of his assessment in such a manner as to secure assessment of property at sixty per cent of its fair and reasonable market value."

Section 55 (185) provides that "it shall be the duty of the Board of Review to meet on the second Monday in April and to sit as long as may be necessary to carefully **examine** and **inspect** all tax returns and assessments delivered to it by the County Tax Assessor."

In my opinion your question is answered by the language of the various sections relating thereto. Section 50 uses the words "to **inspect, review, revise** and **fix values.**" Section 54 says "**review, revise** and **fix assessed values** of any person as **to any** or **all items** so as to secure assessment of the property at 60% of its fair and market value." Section 55 provides that the "Board of Review shall carefully **examine** and **inspect** all tax returns and assessments."

The definitions of these words as given by Webster are as follows:

"Inspect—to look upon, to view closely and critically especially so as to ascertain quality or state, to detect errors, to scrutinize to examine, to view and examine officially."

"Review—to view, or examine again, to go over with critical examination in order to discover excellence or defects in the law, to reexamine judicially."

"Revise—to look it over again for the purpose of correcting, or improving, to go over, to read over to correct error."

"Fix—to act or place definitely, to establish."

It is synonymous with determine, settle, place, set, confirm, limit, delimit and establish.

"Examine" means "to test by an approved method, to inspect carefully, to subject to inquiry, to inquire into, to investigate or scrutinize."

These various terms with the exception of "fix" are practically synonyms. Each of them provides, in my opinion, for a personal inspection of return. The fact that corresponding terms are used in each section again and again, emphasizes the plain intent of the statute that the assessments should be subjected to individual scrutiny and inspection, and only after such examination shall the board judicially fix or establish values. I do not think that the language of the statute permits any other conclusion but that individual inspection of such assessment as made by the Tax Assessor, except such as have been approved by the State Tax Commission is required.

Section 54 further provides that the Board of Review shall fix assessment of any person by raising or lowering the assessment of **any** or **all items** so as to secure the assessment of property of 60% of its value.

The court manifestly cannot raise or lower items of any assessment without personal inspection and arrive at an assessment of individual items at 60% of their fair and reasonable valuation.

Whatever possible doubt as to the Board's power to make a blanket order reducing taxes, in my opinion, is removed by reference to Section 36 (157) which provides that the "real estate or improvements, as fixed for taxation for the year next following the then current rent tax year, shall be prima facie basis of value of such property for assessment for the current tax year and such property shall not be assessed for taxation at a **lower valuation unless upon evidence submitted** to the Board of Review it is found that the assessed valuation of the property should be reduced."

It, therefore, appears to be clear that the Board of Review cannot reduce a previous year's assessments of real estate, or improvements, except on evidence presented to it. This section together with those requiring that the Board of Review shall revise, examine, correct, inspect and fix assessments render the Board of Review incapable of passing on the assessments in a blanket way and renders it entirely without power to re-

duce any assessments of real estate without evidence submitted to it. In my judgment "evidence submitted" means evidence pertaining to the individual assessment.

I, therefore, hold that the Board of Review is without authority to adopt a blanket resolution reducing assessed valuations on a percentage basis. The Board of Review has no authority to reduce values approved by the State Tax Commission, (Section 54), and the effect of such an order would be a marked inequality. It is probable that such action would be violative of Section 211 of the Constiution requiring "all taxes levied on property in this State shall be assessed in exact proportion to the value of such property."

Answering your second question, I advise that if the Board of Review has adopted such a resolution it is a nullity and it is the Tax Assessor's duty to enter on his tax books the value existing before such action of the Board of Review in the manner provided in Sections 36 and 38 (157, 160).

The answer to your third question, I think, is to be found in Section 43 (168) which provides that the

> "State Tax Commission or the agent or assistant thereof shall certify on the books of assessments that the same has been **examined** and **corrected by him.**"

"Corrected" is defined by Webster as follows:

> "To make or set right, to amend, to rectify, to bring into conformity with some standard or rule."

The "standard or rule" is that provided by law and when the Tax Assessor attempts to enter an assessment otherwise it is the duty of the State Tax Commission to examine and correct the same so that the assessment as entered will be in conformity with the law. The Tax Collector should base his collections on the book of assessments so examined and corrected and certified as such by the State Tax Commission or its agents.

Beltona Coal and Mining Co. v. Hawkins, 210 Ala. 359, 98 So. 26.

Answering your fourth question, I am of the opinion that the Board of Review has no authority to change an assessment approved by the State Tax Commission.

Section 54 (184) except from those assessments which the Board of Review shall inspect and fix.

> "Such assessments as have been approved by the State Tax Commission."

Section 35 (158) provides:

"Any valuation fixed by the tax assessor on any property returned from taxation may be approved by the State Tax Commission, which approval, if made, must be shown on each separate return so approved. When a tax return has been so approved by the State Tax Commission, the State has no appeal from such approved assessment. The taxpayer, however, may appeal from such assessment in the same manner and within the same time as appeals are allowed from non-approved assessments. The several county tax assessors are required to keep a docket of all non-approved assessments in such form and containing such data as may be prescribed by the State Tax Commission."

The intent of these two sections clearly seems to remove from consideration by the Board of Review any assessments which have been approved by the State Tax Commission and any order or action of the Board of Review thereon is a mere nullity.

Answering your last question, I advise the Tax Assessor should enter on his books the assessments approved by the State Tax Commission regardless of any action thereon by the Board of Review.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 11, 1931

Mr. Jno. C. Curry,
Chief Clerk,
Ad Valorem Tax Department,
State Tax Commission,
CAPITOL.

(1) Board of Review cannot sit to fix assessments after first Monday in May.

(2) If Board does not complete work by that date, Tax Assessor should enter values fixed by him.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your second letter of May 4, 1931 in which you state.

"Section 54, page 152, Acts 1923, provides for the meeting of the Board of Review in each county on the second Monday in April, and

contains the following limitations, '—and such board shall meet on the second Monday in April and sit at the courthouse of the county from day to day until their duties are completed, which shall not be later than the first Monday in May, and shall review, revise, correct and fix the assessment values made by the tax assessor * * *"

"In the event the Board of Review has not completed the work of reviewing and revising all of the assessments fixed by the tax assessor in any county by the first Monday in May, has the Board of Review the right to extend its work of review beyond the first Monday in May?

"It would appear that the Board would not have authority to extend its meetings beyond the first Monday in May, first, for the reason that it is so limited by the above mentioned section, second, the tax assessor is required by Section 56 of the above act to give three weeks notice by publication immediately upon the completion of the work by the Board of Review, and third, the taxpayer is compelled to file his objection to any value which may be fixed by the Board by the last Monday in May (Section 56 above). It would be impossible for the assessor to give the three weeks notice by publication before the Board is required to meet to hear objections on the first Monday in June, if the Board is allowed to sit later than the first Monday in May to review and revise the assessments. The taxpayer would be prevented from filing his objections by the last Monday in May if the Board of Review continued its work of reviewing the assessments up to and beyond that date.

"If you say that the Board of Review had no authority to continue its meetings for the purpose of review beyond the first Monday in May, what effect does the failure of the Board of Review to complete its work have upon the assessments which were not acted upon by the Board within the time prescribed by law. In other words, what values are to be placed on these assessments which are not taken up by the Board of Review by reason of the fact that it did not complete its work within the time prescribed by law."

The answer to your question, in my judgment, is contained in Section 54, Acts 1923, page 152 to which you refer. This Act provides that the Board of Review may continue in session from the second Monday in April until its duties are completed, **which shall not be later than the first Monday in May.**

In my opinion the last clause is mandatory and any authority given by said section terminates on the first Monday in May and thereafter the Board of Review can take no action in the premises.

Opinions Attorney General, Series 7, 1928, p. 224.

While perhaps a slight doubt might have been engendered by the words in Section 55 (185-1929 Code) which provide that the Board of Re-

view shall continue in session as long as may be necessary, this language must be construed in conjunction with Section 54 which clearly provides the first Monday in May as the final day on which the Board may act under the provisions of these sections. Any possible doubt as to this is removed by Section 56 (1929 Code-186) which provides three weeks notice that assessed values have been fixed, that the tax return lists are open for public inspection and that on the first Monday in June the Board of Review will meet to hear protests which **protests must be filed in writing** before the **last Monday in May.** Any other conclusion but that Section 54 is mandatory in fixing the first Monday in May as the last day the Board of Review can act in assessing property would render Section 56 inoperative.

It is my opinion that the Board of Review cannot take action on such assessments after the first Monday in May.

Answering your second question, it is my judgment, that if the Board of Review fails to complete its work by the first Monday in May, the duty devolves on the Tax Assessor to enter such assessments in accordance with Section 36, 1929 Code, p. 157.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 11, 1931

Hon. A. L. Hasty,
Judge of Probate,
Linden, Marengo County, Ala.

Habeas Corpus—Before Probate Judge in criminal cases—Fees of Probate Judge.

Opinion by Assistant Attorney General McCall.

Dear Sir:

This acknowledges receipt of your letter of April 18, 1931, in which you state that you have to hear a great many applications for habeas corpus in criminal cases.

You request my opinion:

As Judge of Probate, have I the right to charge any costs for hearing a petition for writ of habeas corpus in criminal cases?

A careful examination of Chapter 151, Code of Alabama, 1923 (Sections 4305-4347, inclusive) indicates the following:

Under Section 4343 "for holding an examination, the **judge of probate** is entitled to three dollars; **which fees must be taxed in the bill of costs in the case provided for by Section 4341,** and in other cases collected by execution issued by the judge of probate."

The "case provided for" in Section 4341 is "the **subsequent conviction** of the party where he is **detained** on a **criminal** charge."

The "other cases" referred to in Section 4343 **and cases other than where** petitioner is detained on a **criminal** charge and therefore has no application to you and your inquiry.

If the petitioner is detained on a criminal charge and subsequently convicted the fees mentioned in Section 4343 **follow that case** and are collected as a part of the costs on its final determination.

If there is an acquittal there is no provision for payment of such costs.

Section 3740 has no application to costs and fees arising on habeas corpus before a judge of probate where there is a release or subsequent acquittal.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 12, 1931

Hon. Thos. S. Woodroof,
County Solicitor,
Athens, Alabama.

Lien for State and County Taxes prior to all liens.

A certificate of convenience and public necessity as described by Section 4, page 311, General Acts of Alabama of 1927, issued to a motor carrier, is not subject to levy for payment of delinquent ad valorem taxes due on automobiles operated under such certificate.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I acknowledge receipt of your letter of April 29th as follows:

"Two or three weeks ago the No. 7 Bus Line, a corporation doing business in this county went out of business. This bus line operated a bus line under the Public Service Commission of this State. They

had given a lien upon all of their property, including their franchise to the General Motors Acceptance Corp., to secure the payment of some busses that were purchased from said company. They fell behind with the payment to the General Motors Acceptance Corp. and said Co. sold under their lien the franchise and all of the equipment. The taxes for the year 1930 and 1931 have not been paid: I shall thank you to advise me how the tax collector shall proceed to collect these taxes.

"Is the property which was disposed of including the franchise liable for the taxes? If so how is this liability to be established? The tax collector is afraid to levy on the busses without having authority from you to do so, since these busses are being operated under the Public Service Commission.

"I shall appreciate you advising me at once in regard to this matter as it is necessary that the tax collector take some step immediately to collect these taxes."

Section 8874, at page 291, of the Civil Code of Alabama of 1923 provides a prior lien upon each and every piece or parcel of property real or personal for the payment of any and all taxes which may be assessed against the owner or upon such property * * * *.

I am of the opinion that the levy just mentioned is prior to any lien held by the General Motors Acceptance Corporation.

If the property can be located within the State this lien may be enforced as provided in Article 6, at page 1344 Civil Code of Alabama of 1923.

In your letter you refer to a franchise owned by the bus line. I assume you have reference to a certificate of convenience and public necessity, as described by Section 4, page 311 of the Acts of the Legislature of Alabama 1927. This certificate is not subject to levy for non payment of taxes. Indeed, it is not subject to levy for any purpose. This certificate or permit may be revoked or suspended by the Alabama Public Service Commission and the certificate may be sold, assigned, leased, transferred or inherited only upon authorization by the Alabama Public Service Commission. The privileges of said certificate are exercised only upon authorization of the Alabama Public Service Commission. This certificate hardly rises to the dignity of a franchise. The right is an incorporeal heriditament, intangible and not the subject of levy and execution. I am unable to find any authority in the statutes or decisions authorizing such a levy.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 12, 1931

Hon. J. Z. Mims,
Clerk of the Circuit Court,
Clanton, Chilton County, Ala.

County officers—Quarterly reports to Commissioners Court, Board of Revenue or other like governing body—under Act approved March 9, 1931 (No. 129—H. 56, Stewart)—contents of such reports.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter referring to the foregoing Act of the Legislature. You request my opinion:

1. Are judgments in civil cases; clerk's fees in civil cases; sheriff's fees in civil cases or witness fees in civil cases, which are collected by the clerks of the Circuit Courts and paid to the individuals considered county funds and are supposed to be reported?

2. Are clerk fees; sheriff fees; and witness fees in criminal cases as set out by the scale of fees to be collected by the clerks of the circuit courts and paid to individuals considered county funds and are supposed under said Act to be reported as provided?

Under Section 1 of said Act county officers (1) make quarterly reports on or by February 15th, May 15th and November 15th, of each year "of the amounts received and the amounts distributed" by the officer. This report relates to "**county** funds or moneys" received or distributed by the officer. The officer, with this report, must, at the same time, make and submit a "certified statement as to the distribution" of all such county funds or moneys, "showing (therein) (1) to whom paid, (2) the time of payment, (3) for what purpose paid. This itemization of such county fund or moneys "shall include **moneys,** fees or compensation" paid by such reporting officer to himself, his assistants, agents and employes.

Therefore, under this law, your first question is answered in the negative, as the items there listed are not "county funds of moneys" and the fees or compensation there mentioned are not from "county funds or moneys."

In answer to your second question will state that the clerks' fees, sheriffs' fees and witness' fees in criminal cases, **except where** any of such items may come from "**county funds** or **moneys**" are not to be reported or itemized.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 14, 1931

Hon. Pleasant Nichols, Sheriff,
Pike County,
Troy, Ala.

Authority vested in Sheriff to appoint bailiff as provided in Section 6716 of the Civil Code of Alabama of 1923.

Bailiff receives compensation as provided in Section 6717 of the Civil Code of Alabama of 1923.

Return on writ of arrest made in accordance with Section 3286 of the Criminal Code of Alabama, 1923.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I beg to acknowledge receipt of your letter of May 9th as follows:

"Please let me have your official opinions on the following questions:

"1. In whom is the authority vested to appoint the bailiffs to serve the Circuit Court of Pike County, the Circuit Judge or the Sheriff?

"2. If you rule that the Circuit Judge has such authority, what recourse has a bailiff to recover compensation for his services when he has served the Circuit Court under appointment made by the Sheriff?

"3. How much time has a Sheriff to make a return on an indictment after it is received in his office?"

In answer to your first question, I beg to refer to Section 6716 of Volume 3 of the Civil Code of Alabama at page 382. This section provides:

"6716. Bailiffs, constables, or deputies to attend court.—The sheriff of the county must summon one person to serve as bailiff for the grand jury; one to serve as bailiff in every circuit court, or division thereof, in which cases are being tried without juries when directed by the judge; and not exceeding four to serve in every court, or division, in which cases are being tried by juries, when the judge thereof certifies that such bailiff or bailiffs are actually necessary."

The effect of this section is to provide that the office of Bailiff shall come into being when the Judge certifies its necessity. The certificate of the Judge constitutes the Sheriff's authority and the Sheriff then makes the appointment.

Ward v. State, Ala. App. 170, 82 So. 660, 661, 662, 663.

In answer to your second question, I beg to refer you to Section 6717, of Volume 3 of the Civil Code of Alabama at pages 382 and 383. This section provides:

"6717. Compensation to such constables.—Bailiffs actually serving in court shall receive three dollars a day for every day they serve, to be paid out of the county treasury on the certificate of the presiding judge showing the number of days the bailiff actually attended the court, and that his service was necessary. In circuits composed of one county having two or more circuit judges, each bailiff shall received a salary of one thousand dollars per annum, payable in twelve equal monthly installments out of the treasury of the county constituting such circuit upon the warrant of the president of the board of revenue; but nothing in this section or the preceding section shall apply to circuits having five or more judges."

In answer to your third question, I beg to refer you to Section 3286, of Volume 2 of the Criminal Code of Alabama at page 42. This section provides:

"3286. Return of writ not executed, when and how made.—When any writ of arrest is not executed, it must be returned by the sheriff to the clerk of the court from which it was issued by the third day of such court, or before the case is called in order, and when the return is made by the sheriff of any other county than that in which the indictment was found, it may be made by mail, as prescribed by the preceding section."

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 15, 1931

Hon. H. H. Stewart, Assistant Director,
State Board of Administration,
CAPITOL.

Fees—Circuit Clerk—Appeals in criminal cases—Clerk allowed fee for preparing transcript of proceedings and record of appealed cases in the Court of Appeals under Sections 3667 and 3739, Code of Alabama, 1923.

Opinion by the Attorney General.

Dear Sir:

An opinion of this office addressed to you of date May 2, 1931, has been called to my attention, in which it was held that a Circuit Clerk was

not entitled to a fee of fifteen cents per hundred words under Sections 3667 and 3739 of the Code of 1923, for preparing transcript of the record and proceedings in cases appealed to the Court of Appeals. I wish to recall that opinion and desire that you treat it as of no force and effect.

Circuit Clerks are entitled to a fee of fifteen cents per hundred words for preparing the record and transcript of cases appealed to the Court of Appeals, which fee is to be paid as Clerks are paid for preparing transcripts and records for cases appealed to the Supreme Court.

The statute very clearly makes it the Clerks' duties, when an appeal is taken, to make out a full and accurate transcript of the record of the proceedings below—Section 3248, Code of Alabama, 1923.

Throughout all the provisions of the Code of 1923, relative to appeals, the word "transcript" and the word "record" are virtually synonymous.

A transcript of the record is a copy of the files, docket entries, records, copy of the bill of exceptions in his office pertaining to the case appealed.

Robinson v. Sawyer, 170 Pac. 881.

The requirement that the appellant file a transcript of appeal has been held not to be complied with by filing the original papers from the court below. The rules of the court strictly prohibit the original papers in any cause from being taken out of the office of the Clerk unless upon order of the Court to which the appeal is taken.

Lindsey v. Supreme Lodge of Knights of Honor, 90 S. H. p. 1013.

It is provided in felony cases that the following items of cost shall be paid out of the Convict Fund: Making a transcript and certificate * * * * $.15. I construe this provision for paying costs out of the Convict Fund to contemplate also transcript of any kind which the Clerk is required to prepare in the case, whether on appeal or whether merely a transcript prepared for the Convict Department.

It is provided that Clerks of the Circuit Courts are entitled to the following fees in the following cases: For making transcript and certificate, for each one hundred words * * * * $.15.

There can be no question but that the transcript of the record, evidence and proceedings, a clerk is required to file with the Court of Appeals on an appealed case, is a transcript within the meaning of the Sections of the Code last referred to. The fact that the one provision of the Code provides specifically that the Clerk is entitled to certain fees for preparing record for the Supreme Court in nowise influences me to the view that the use of this specific provision by the Legislature was intended to operate as a denial of his right to charge fees for preparing transcript or record for the Court of Appeals.

Furthermore, when the Clerk prepares a record and transcript in a case appealed to the Court of Appeals, such record and transcript is a record and transcript ultimately for the Supreme Court. Each case may be certioraried and the record prepared on the appeal to the Court of Appeals becomes a record to be reviewed by the Supreme Court. Therefore, it is seen that under either version expressd in this opinion, the clerk is clearly entitled to a fee for preparing a transcript of cases appealed to the Court of Appeals.

In view of the foregoing expression, you must treat the ruling of this office to the contrary effect, of May 2, 1931, of no force, as the same is hereby recalled.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 19, 1931

Hon. A. F. Harman,
State Superintendent of Education,
CAPITOL.

Schools—Trustees for elementary and high schools—including County High Schools.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of May 13, 1931 calling attention to Section 133 and Articles VIII and XXIV, Alabama School Code, 1927.

You request my opinion:

Does the law provide for a local board of trustees for accredited high schools, including County High Schools.

My answer is in the affirmative.

Section 133 makes no exception.

County High Schools heretofore established are now a part of the high school system.

There is nothing in the law limiting trustees simply to the elementary schools.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 19, 1931

Hon. John C. Coleman,
Tax Assessor,
Marshall County,
Guntersville, Ala.

Property bought with funds derived from War Risk Insurance is taxable.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of April 23rd in which you make inquiry as follows:

"We have in this County, a minor, whose father was killed in the year 1918 while in the service of the United States. This minor is drawing $57.50 per month from the Government on his father's War Risk Insurance. The guardian of this minor has purchased property with the money so obtained and now claims that same is exempt from taxation under your opinion of February 26th, 1931.

"The property in question was not purchased with any money received as compensation or pension or under the World War Adjusted Compensation Act, but was purchased with money received under the War Risk Insurance carried by his father."

It is my opinion that this property is taxable.

In an opinion rendered by the Attorney General under date of Feb. 26, 1931, it was held, as I interpreted the ruling, that the property of disabled veterans who have been declared incompetent, and a guardian appointed, when such property was purchased from funds derived from benefits of the World War Adjusted Compensation Act, is exempt from taxation, not by virtue of the Federal Act declaring that all such funds are exempt, but because such disabled veterans are wards of the government and the tax essentially would be a tax on an instrumentality of the United States government.

In the instant case as I understand it, the money was paid under the War Risk Insurance Acts of 1917 and 1918, that when paid to beneficiary **is absolutely in his control**, and likewise when paid to a guardian, subject to the ordinary powers and local laws regulating the relation of guardian and ward. Hence if such money is invested in land or other property, it loses any individuality it may have as government funds and becomes subject to local laws, taxation and otherwise.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 19, 1931

Hon. Price Williams,
Judge of Probate,
Mobile, Alabama.

Party redeeming lands sold at tax sale must deposit with the Judge of Probate amount of money for which lands were sold, with interest at rate of fifteen per cent per annum from date of sale, together with amount of **all** taxes due on such lands since the date of sale.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of April 20th, in which you state:

"The County of Mobile in 1930, under an Act of the Legislature, for the construction of roads, added a four mill ad valorem tax."

You attach a letter from Mr. D. B. Cobbs in which he claims that this additional tax ought not to be added to the tax when he redeems. He claims that only the rate at the time the property was sold should be applied on redemption. You ask me to advise you:

Whether such additional four mill ad valorem tax for the year 1930-1931 should be added?

In my opinion, your question is answered by reference to Section 3110 of the Code of Alabama, 1923, which is as follows:

"3110. Mode and terms of redemption where land sold to State.—In order to obtain the redemption of land from tax sale, where the same has been sold to the State, the party desiring to make such redemption shall deposit with the judge of probate of the county in which the land is situated the amount of money for which the lands were sold, with interest thereon at the rate of fifteen per cent per annum, from the date of sale, together with the amount of all taxes due on such lands since the date of sale, including the current tax assessing year, with interest thereon at the rate of eight per cent per annum from the maturity of such taxes, and all costs and fees due to officers as set out in the following section."

This section leaves no room for construction, clearly stating that the party redeeming shall deposit with the Judge of Probate the amount of money for which the lands were sold with interest thereon at the rate of fifteen per cent per annum from the date of sale, together with the **amount of all taxes due on such lands since the date of sale."**

The four mill tax would be a portion of "all taxes due on such lands," and therefore, should be included when the land is redeemed.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 20, 1931

Hon. S. R. Butler,
State Tax Commissioner,
CAPITOL.

1. State Tax Commission has no authority to issue free tags except to State owned cars.

2. Motor vehicles owned by individuals residents on Government reservations are not subject to ad valorem tax where State has ceded "exclusive jurisdiction" to United States.

3. Motor vehicles owned by individuals, residents on United States government reservations, are subject to license tax when used on the public roads of this state.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"During the last administration, now more than two years ago, this Commission began the practice of issuing automobile tags complimentary to the officers and employees domiciled at Maxwell Field. The original intention, as I understand it, was to confine this issuance of complimentary tags to Maxwell Field, but this proved impossible and in a short while tags either issued from this Commission, or distributed by the officers in charge, were in use by those who were stationed at Camp McClellan, near Anniston, at or near Muscle Shoals, and other points where Federal officers were living.

"I can find no authority for this Commission to grant free tags to any Federal Army or Navy Post; therefore, if I am correct in this opinion, I am advising the Governor to order that the issuance of free tags be discontinued."

You ask my opinion on the following:

1. Whether this Commission has authority to issue free tags under any condition, except tags issued for State cars.

2. Whether cars kept at Government reservations will be subject to ad valorem tax when tags are purchased.

In answer to your first question I advise that I find no authority for the Tax Commission to issue free tags under any conditions except as provided in Section 22, Acts 1923, p. 284, the pertinent part of which is as follows:

> "Nothing herein contained shall be construed so as to impose a license tax on motor vehicles owned and used by any municipal corporation or county in this State, but all such vehicles shall bear a numbered tag, which the probate judge is authorized to deliver without the payment of any fee or charge, except the sum of fifty cents to cover the cost of each tag delivered by him to such municipal corporation or county * * * *. Cars **owned by the State** shall also be **required to bear a numbered tag,** application for which shall be made to the probate judge of Montgomery County, and said probate judge is hereby authorized and **required to deliver without cost such tag** and receipt upon application of the proper official."

The last quoted portion is the only authority I have found for authorizing the issuance of a free tag. It is, therefore, my opinion that the Tax Commission has no authority to issue free tags to officers or other parties located at Maxwell Field, or other Government reservations located within the State, or to any other parties except for cars owned by the State.

I call to your attention the opinion of the Attorney General to the State Board of Administration of Alabama, of May 15, 1929, (Opinions Attorney General 1928-1930, p. 369) also to the case of Storaasli v. State of Minnesota, decided by the Supreme Court of the United States on March 23, 1931, in which it was held that where automobiles owned by officers, quartered and resident upon a Federal reservation, which are used upon the public highways of the State, are liable for the license tax provided by the State law of Minnesota, as such tax is a privilege tax for the use of the highways.

It follows, therefore, that motor vehicles of residents of Federal reservations, operated on the public roads in the State of Alabama, are liable for the license tax required by law, the payment of which is evidenced by the issuance of a tag or license plate.

The question of the taxability for ad valorem purposes of such motor vehicles when the owner resides within the limits of a Federal reservation was not expressly passed on in the Minnesota case, for the reason perhaps, that the Minnesota statute provided that the license tax should be in lieu of all other taxes except wheelage taxes.

The preliminary question in your case to be decided is the situs of the motor vehicle.

"The general rule is that the situs of tangible personal property for purposes of taxation, is the domicile of the owner."

Cooley on Taxation, Vol. 2., 4th Div. Section 451.

This, of course, may be changed where such tangible personal property is permanently located elsewhere. However, the Alabama statutes have expressly provided that motor vehicles shall be assessed for ad valorem taxes where the owner of such vehicle resides if the vehicle is owned by an individual, and if owned by a firm or corporation in the county where the same is used.

Section 18, Acts 1927, p. 139.

This very definitely fixes the situs of motor vehicles for ad valorem taxation, and hence if such vehicles belong to parties actually residing on a Federal reservation, the situs of the vehicle would be that of the owner, and hence would be the Federal reservation. Any right of taxation of such motor vehicle would be dependent on the State's right to tax the property of individuals resident on Federal reservations.

What are the rights of the State with reference to the taxation of the property of private individuals thus located? The pertinent provision of the Federal Constitution, Article 1, Section 8, Clause 17, reads as follows:

"The Congress shall have power: * * * To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings."

Sections 1505 and 1506, Code of Alabama, 1923, provide as follows:

"1505. Cession of certain lands to United States.—The State of Alabama has ceded to the United States of America jurisdiction over all lands which have been or may hereafter be purchased or otherwise acquired by the said United States in the State of Alabama, for the purpose of erecting thereon any armory, arsenal, fort, fortification, navy yard, custom house, light house, post-office, or public building of any kind whatever, and the legislature of the State of Alabama has consented to all such purchases or acquisitions by said United States of America."

"1506. Duration of jurisdiction.—The jurisdiction ceded shall continue during the term the United States of America shall remain owner of the land so purchased, and shall be exclusive for all purposes except that the service of process issued out of the courts of the state of Alabama shall not be prevented therein."

The answer to your second question, therefore, is, that if the motor vehicle or other personal property is located on lands of the United States lying within the boundaries of the State of Alabama, which have been purchased or otherwise acquired by said United States for the purpose of erecting thereon any armory, arsenal, fort, fortification, navy yard, custom house, light house, post office, or public building of any kind whatsoever, it is not subject to ad valorem taxes by the State of Alabama, under the laws as made at the present time.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 20, 1931

Hon. R. A. Moody, Sheriff,
Marshall County,
Guntersville, Ala.

County jails cannot be used for the incarceration of municipal prisoners except contracted for under Section 2317, Code of Alabama of 1923.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of May 12, 1931 in which you request my opinion as follows:

"1. Is a Sheriff required, under the laws of the State of Alabama, to receive prisoners under arrest on a warrant in a municipality for violating a municipal ordinance and to keep said prisoners for said municipality, (a) when the jail is in the municipality in which the prisoner is charged with the offense? and (b), when the jail is not in the municipality in which the prisoner is charged with violating the ordinance?

"2. Is the Sheriff required to receive and keep the prisoner for such a municipality when the municipal authorities have not entered into a contract with the Board of Revenue or other like governing body of the county for the keeping of such prisoners for such municipality?

"3. If the Sheriff should receive a prisoner for such a municipality, either in which the jail is situated or in a municipality in which the jail is not situated, and no contract has been made by the municipality with the Board of Revenue or other like governing body of the County, would he be liable in civil damages to such prisoner for keeping him confined in the County jail?"

Answering your first two questions my answer is in the negative unless the city authorities have entered into a contract with the Court of County Commissioners or Board of Revenue of the County for the use of the County jail as provided for under Section 2317, Code of Alabama 1923.

Biennial Report of Attorney General 1928-1930 p. 446.

If the municipal authorities should see fit to contract with the County authorities for the use of the County jail for its prisoners then under Section 2317 supra such arrangements would be legal and the Sheriff would as custodian of the jail be authorized to permit the use of his jail for such purposes.

Of course in the event such contract was entered into the part of the jail to be used by municipalities should be designated and the city or municipality would be charged with the feeding, bedding and medical attention of its prisoners. These things can in no wise be made a charge against the State or County.

Answering your third question, it is my opinion that the Sheriff would be a likely subject of suit for damages if he should receive and confine in his jail municipal prisoners where there is no contract between the county and city authorities for the use of the county jail for such purposes. In the absence of this contract I doubt not but that he would be guilty of false imprisonment which might involve him in a civil suit for damages.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 20, 1931

Hon. W. H. Gillespie,
Sheriff,
Clanton, Chilton County, Ala.

Prisoners—Costs of Removal where jail condemned or closed by State Prison Inspector—how paid.

Sheriffs—Fees—Scire facias.

Sheriffs—Fees—Probate Court.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of May 5, 1931. You state that about April 4, 1931, the State Prison Inspector ordered the Chilton County jail closed for rebuilding and that the prisoners confined therein be removed to the Montgomery County jail until further notice.

You request my opinion:

(1). Referring to Section 3741, 4861 and 4862, Code of Ala. 1923, are the prisoners who were then confined in the Chilton County jail or is the county of Chilton liable for the expenses of the prisoners removal?

(2). If the county is liable for this expense then should the removal fee be finally charged to the prisoner on his conviction when he is solvent, and paid back to the county?

(3). Are sheriffs allowed the same fee in serving and returning scire facias in criminal cases as they are in civil cases?

(4). What are the sheriff's fees in probate court for serving and returning notices, citations or other process in violation to estates of deceased persons or their wills or in violation to minors.

In answer to your first question will say that where there are **prisoners already in** a county jail and the State Prison Inspector orders the jail closed and the prisoners removed to another county, all the expense of such removal must be borne by the county and in no event by the persons **who are then** prisoners therein.

But where a prisoner is removed under Section 4816 the costs of removal are taxed against the prisoner and paid by him on conviction, or, if he is insolvent or is acquitted, then by the county in which the offense was committed.

See Sec. 3741

Opinions Attorney General 1918-20, p. 471.

Again, **after** a jail has been closed by the State Prison Inspector and the prisoners therein **then** are removed, if some one is arrested and committed to jail, in such a case the costs of removal are handled under Section 3741, taxable against and paid by the prisoner on conviction if solvent, or, if he is insolvent, or is acquitted, then by the county in which the offense was committed.

Opinions Attorney General 1926-28, p. 114.

Answering your second question will state that as to those persons who were prisoners in the jail at the time it was closed, under Section 4861 and 4862 expenses of the removal and return are borne by the county and no provision is made for such expenses as to such prisoners to be taxed against them. Sections 4861 and 4862 as to expenses apply only to those persons who were prisoners in the jail **at the time it was closed.**

Answering your third question the fee of a sheriff for serving scire facias is $1.50.

Sec. 7287, Code of Alabama 1923,
See Sections 3389, 3390, Code of Alabama. 1923.
Opinions Attorney General 1926-28, p. 556.

A suit on a forfeited undertaking of bail is a civil and not a criminal action. It becomes a civil action upon issuance of the scire facias against the obligers, which answers the place of a summons or complaint in an ordinary suit.

Hatch v. State, 40 Ala. 718.
State v. Hinson, 4 Ala. 671, 673.
See 192 Ala. 12.

Your attention is particularly called, however, to last above cited decision which relates to the manner of payment of certain costs where conditional judgments against defendant and bail are set aside.

Answering your fourth question, the fee of the sheriff for serving summons and other mesne process is $1.50; for summoning each witness and returning scubpoenas $0.65.

Sec. 7287, Code of Alabama, 1923.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 21, 1931

Hon. J. M. Money,
Judge of Probate,
Scottsboro, Ala.

Voters' List—correct preparation of.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of May 11, 1931, relative to the correct preparation of the voters' list. You inquire as to whether it will be necessary for you to go behind the records of your term of office, as Judge of Probate, into the terms of your predecessors and search the records as to who paid poll tax, or shall you take their lists, assuming them to be correct, and search the records from that time up to the present.

The Judge of Probate is required by Section 387 Code of Alabama, 1923, as amended by Act approved August 20, 1927, (Acts 1927, p. 275) to prepare and advertise a correct voters' list. Said section provides in part as follows:

"387. List of names registered by precincts to be published.—The judge of probate shall, from the registration lists **heretofore** and **hereafter** returned to his office, including those registered prior to January 1, 1902, and excluding those names stricken therefrom, as shown by the list returned to him under Section 401 make **correct alphabetical lists of all electors** registered by precincts and by districts of precincts * * * *."

Construing said Section, I am of the opinion that in order to secure a correct voters' list, it will be necessary for you to not only check your own records but the records of your predecessors.

This list furnished by the Judge of Probate is only prima facia evidence of the qualifications of the voters. One whose name has been omitted from the list may nevertheless be entitled to vote.

For your information, I am enclosing a copy of an opinion written November 1, 1930 to the Chairman of the Democratic Committee of DeKalb County, relative to this subject.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 22, 1931

Hon. Walter K. Smith,
Chief Examiner,
Department of Examiners of Accounts,
CAPITOL.

Convicts—Pay for working overtime for highway department.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of May 13, 1931. You state:

"Under a contract between the State Highway Department and the State Board of Administration certain convicts are hired to the State Highway Department at the rate of $40.00 per month. The convicts have voluntarily done certain work over and above the daily time required by the Highway Department and that department wishes to pay for this over-time work.

"In only one instance does it appear that it is proposed to pay a convict in the amount of $12.00. The other payments proposed to be made are for much smaller sums for the whole month."

You call attention to Opinions Attorney General 1926-28, p. 541, and state it will be recalled that at the time of its rendition the price paid for convicts was $2.00 per day.

You request my opinion:

Is the State Highway Department within the law in paying for this overtime to the convicts?

Section 37, Act approved August 23, 1927 (Genl. Acts 1927, p. 348, 360), which is a re-enactment of Section 1337, Code of Alabama 1923, is in part as follows:

"The State Highway Department * * * may work convicts in the construction, repairing, or maintaining public roads, or bridges by contract or agreement with the Board of Administration, as to the **number** of convicts required to do such work. **Provided** that the charge **for labor** of such convicts, shall not exceed **two dollars per day,** and no other expense incurred by the use of such convicts shall be chargeable to the State Highway Department, except such necessary tools and implements used in the construction, repairing or maintaining of the public roads and bridges upon which the convicts are employed."

Section 3627, Code of Alabama, 1923, reads as follows:

"Convicts **may** be allowed to work for themselves **after the performance of their daily tasks,** in such manner as may be prescribed by the board, and the proceeds or such labor shall be disposed of as the board shall provide by rule."

Section 3592, Code of Alabama 1923, states in part:

"The State Board of Administration **shall** adopt such rules **to be approved** by the governor * * * to regulate the **time and amount of work to be performed** by them (state and county convicts), and the **manner** of working them."

It will thus be seen that it is the **duty** of the Board of Administration, with the governor's approval, to prescribe the hours and amount of work of all convicts in the control of said board. In entering into contracts or agreements with the Highway Department, under Section 37, supra, such rules of the board become part of that contract. The maximum limitation for per diem work of such convicts so hired by the Highway Department applies to the schedule **as set in the rules fixed by the Board of Administration under Section 3592,** supra. When the day's work has been performed by the convict or the task completed according to the limitations fixed in the rules specifying the hours and amount of work in accord with Section 3592, then, the convict may be allowed to work for himself, under the provisions of Section 3627. And he can work for the highway department, or any one else, accordingly as may be permitted by the Board.

In other words, reading the three above mentioned statutes together it is clear that when the convict has performed his daily task as fixed in the rules and regulations made by the Board under Section 3592, the Board may permit him to work on other tasks not called for in its contract and not a part of its schedule of his daily work and the $2.00 limitation of the Act approved August 23, 1927 has no application to that work done by him for himself over and beyond his daily task.

I have carefully read the opinion you cite and knowing the facts upon which it was based which are not fully stated therein, I desire to amplify it to the extent herein stated.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 25, 1931

Hon. W. C. Batson,
Judge of Probate,
Lafayette, Chambers County, Alabama.

Telephones—Commissioners Court.

Telephones—Individual commissioners.

Telephones—County or Deputy Solicitors.

Telephones—County Treasurers.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of May 11, 1931, in it you request my opinion.

1. Is there any authority of law for the Commissioners Court to expend county funds for telephones or telephone calls by the commissioners on official business.

2. Can the office of the County or Deputy Solicitor be furnished with a telephone.

3. Can the office of the County Treasurer be furnished with a telephone.

In answer to your first question will say "no." Neither sub-section 16 of Section 6755, nor Section 9604 Code of Alabama 1923, as amended by Act approved September 6, 1927 (General Acts 1927, p. 693) give any

such authority. Except for the County Superintendent of Education, the officers therein mentioned are the only ones who can be furnished with telephone service at county expense.

Opinions Attorney General 1926-28, p. 567 at p. 570.

The answer to your second question is also in the negative. There is no authority to furnish a deputy or county solicitor with a telephone or telephone service. In fact, the Commissioners Court is under no obligation to furnish such officer with an office.

Opinions Attorney General 1926-28, p. 67, 159, nor with office supplies.

Opinions Attorney General 1926-28, p. 695.

The answer to your third question is in the affirmative. Authorization for a telephone for the county treasurer is contained in Section 9604, Code of Alabama, 1923, as amended by Act approved September 6, 1927. (General Acts 1927, p. 693.)

Opinions Attorney General 1926-28, p. 567.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 27, 1931

Hon. John S. Mooring,
Assistant to Commissioner,
CAPITOL.

Motor vehicles—licensed by other states and used for hire within the State of Alabama, are liable for Alabama license.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of May 20th in which you request my opinion upon the following facts:

"Please furnish your opinion at the earliest convenient moment of the meaning of the words 'for hire' in Section 19, Acts 1927, p. 139, as applied to the following cases:

(1) A concern regularly engaged in operating trucks for the hauling of merchandise of different sorts and located in another State

has taken out all tags or license plates as required by such other State. Occasionally, say not more than three or four times in any one year, this concern sends a truck, in the conduct of its regular business, into Alabama. Should an Alabama tag be required?

(2) A concern operates trucks or vans in another State for the purpose of moving people; that is, of hauling furniture and household goods and effects. This concern moves people from such other State into Alabama occasionally say three to four times a year and, of course, receives compensation for such hauling. Would this truck be 'for hire', within the meaning of the section referred to and be required to take out an Alabama license tag?

(3) A concern not regularly engaged in hauling for hire, but using its trucks principally in the conduct of its own business, occasionally makes a contract for hauling furniture and household effects and comes into Alabama only three or four times each year. For these occasional contracts, of course compensation is received. Would such trucks be 'for hire' within the meaning of the section of the Alabama law referred to?

This Commission, in accordance with what it has understood to be the position taken by your office, has always held that an Alabama tag would be required in either of the three cases mentioned, but we would be glad to have specially your opinion as to whether the words 'for hire' have application on occasional trips and when the contract under which compensation is received is made in the other State and before the truck or trucks into Alabama."

In answer to your first question, I advise that it is my opinion that such trucks are liable for the Alabama license.

My answer to your second question is likewise in the affirmative.

My answer to your third question is also in the affirmative.

This matter has been repeatedly ruled on by this office. In an opinion under date of Sept. 28, 1929, Biennial Report of the Attorney General 1928-30, p. 639, "for hire" was defined as "to let the temporary use of an article for compensation."

Harris v. Atlantic City, 62 Atlantic, 995.

In an opinion rendered Sept. 22, 1930, Biennial Report of Attorney General 1928-30, p. 938, it was held that trucks having Mississippi license hauling gravel from a gravel pit located in Alabama for the construction of a road in Mississippi where the trucks remained in Mississippi at night, were liable for Alabama license.

Again, under date of September 24, 1930, Biennial Report of the Attorney General 1928-30, this office held that cars and trucks from Florida

which operate in Alabama for the purpose of hauling freight and carrying passengers for hire have to carry an Alabama license.

Under the definition given in the opinion appearing on page 639, supra, the temporary use of an article for compensation is the definition given of the words "for hire." This definition covers each case set out in your letter.

In each case there is a use of a motor vehicle for hire on the public roads of Alabama and hence it is my judgment that there is liability for the Alabama license under the facts set out by you in your three inquiries.

While it may be argued as it has been, that this ruling will cause reprisals on the part of other states and will constitute bad policy for the State, that is a matter completely within the purview of the Legislature and one over which this office has no discretion or authority.

This office can but construe the law as laid down in the statutes, leaving the questions of the wisdom entirely to the Legislature, in whose sphere are all questions of the wisdom or policy of the statutes.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 6, 1931

Hon. John Brandon,
State Auditor,
CAPITOL.

Legislature—per diem of members.

Opinion by the Attorney General.

Dear Sir:

This is to acknowledge the receipt of your letter of June 2nd.

You state that the Legislature passed a joint resolution providing that it should recess from June 1st to June 9th, 1931. You inquire whether or not members of the Legislature are entitled to per diem during the recess provided in the resolution. You enclose a copy of the resolution, in which it is provided that committee meetings may be held during this recess. I know that committee meetings have been held during the recess.

Section 49 of the Constitution provides that the members of the Legislature shall receive $4.00 per day as compensation.

Section 1521 of the Code of 1923, provides inter alia that each member of the Legislature shall receive $4.00 for each day's attendance.

The above mentioned Section of the Constitution and the Section of the Code referred to, are apparently the only provisions of law, relative to the pay of the individual members of the Legislature, with the exception of that subsequent Act of 1927, which allows members of the Legislature a sum not exceeding $4.00 per day for expenses.

We are now confronted with the question of determining, whether or not, within the meaning of the laws relative to pay of the members of the Legislature, such members are in attendance upon the Legislature during a recess of about eight days.

It is a matter of common acknowledge that the Legislature has frequently, indeed as a rule, not been in session for over two days a week since it convened in January. However, the interim between the Legislative days has not been for such a length of time as in the instant case.

Where the Legislature recesses for a great number of days, to permit the members to return to their homes and their private businesses, the business of the Legislature ceases, and the members are not entitled to per diem. It is obvious from an application of common knowledge that the Legislature did not recess in the instant case for the purpose of allowing its members to return to their homes and to their private businesses. In fact, the resolution sets out the purpose of this recess, which is probably for an unusual length of time between Legislative days, viz: to cooperate in the holding of the Confederate Reunion. It may be seriously doubted whether or not had the Legislature remained in session during the Reunion it would have been able to have transacted any public business, and the adjournment or recess might as well have been taken of necessity.

The resolution provides that committee meetings may be held during the recess and committee meetings have been held during the recess.

I am of the opinion that the Legislature did not adjourn for such a length of time for the purpose of allowing the members to return to their homes or their private businesses, as that the members are deprived of their per diem during the recess. I do not think that the business of the session has ceased, nor do I think that the adjournment was taken for the convenience of the members of the Legislature, or that the recess is for such a length of time as contemplated in the few decisions of the high courts on this subject.

I am of the opinion that the members of the Legislature are entitled to their per diem for the days intervening during this most recent recess.

Moren, Lt. Gov. v. Blue, 47 Ala. p. 709.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 6, 1931

Hon. W. G. Merrell, President,
County Board of Revenue,
Columbiana, Shelby County, Alabama.

Fees—Officers—where forfeiture of bail, judgment nisi, issuance of alias capias, and conditional judgment set aside by court—officers fees accruing not paid by county.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of April 10, 1931. In it you state the following:

"An increasing number of defendants charged with offenses before the County Court are defaulting, resulting in forfeitures on their appearance bonds. Judgments nisi are entered, alias warrants and scire facias are issued to the defendant and sureties, returnable to the next (monthly) term of court, at which time almost invariably excuses satisfactory to the court are offered, and the forfeiture set aside without penalty.

"It was formerly the custom for the officials in such cases to charge their fees against the fine and forfeiture fund; but recently they have been filing their claims with the Board of Revenue, charging such fees to the General Fund of the County and giving as their authority a letter from the Attorney General to the Board of Revenue dated November 27th, 1929.

"The judgment entry in these cases reads as follows:

'November 3rd, 1930: Forfeiture against defendant and bail; alias warrant and sci fa ordered and case continued.'

'December 12th, 1930: Forfeiture set aside: Judgment against Shelby County for the costs.'"

You request my opinion:

May the County Board of Revenue legally allow the claims of the Clerk and Sheriff for their services, payable out of the County Treasury, where there has been a forfeiture taken, judgment nisi entered, alias capias issued, and the court later sets aside the conditional judgment.

My answer is in the negative.

Copeland v. Jefferson County, 192 Ala. 12.

By former opinions of this office dated respectively June 29, 1929, and November 27, 1929, appearing in Biennial Report 1928-1930, pp. 508 and 686, this office took a contrary view, and, in doing so cited Coosa County v. Parker, 83 Ala. 269, which decision has been overruled by the Supreme Court in Copeland v. Randolph County, supra.

By Section 3740, Code of Alabama, 1923, it is provided:

> "Of the fees specified in the preceding section, **such as accrue on a forfeiture** against a defaulting juror, witness, **or bail, must be taxed as costs, and collected under execution against such witness, juror, or bail, unless excused therefrom by the court.**"

The law of costs must be deemed and held a penal law and no fee must be taken but in cases expressly provided by law. The **fees** prescribed in this Code shall be the **only** fees that can be collected by any officer."

Section 3734, Code,
Mobile County v. Williams, 180 Ala. 639,
Dawson v. Matthews, 105 Ala. 485,
State v. Brewer, 59 Ala. 130.

In Copeland v. Jefferson County, supra, the court in commenting on the decision in Coosa County v. Parker, supra, said:

> "No attention appears to have been given to the chapter on 'Fees in Criminal and Quasi-Criminal Cases' where provision was made for fees in forfeiture proceedings against defendants and their bail."

Under the foregoing, on your statement of facts, the only way the officers may get their fees is for the court to tax the costs against the defendant and bail and let them be collected under execution.

The opinions of June 29th and November 27th, 1929, supra, are hereby overruled.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 8, 1931

State Tax Commission,
CAPITOL.

Attention: Mr. S. C. Crockett.

Persons operating a pressing club where the work is received and delivered but where the actual cleaning or pressing is done else-

where are liable for license for each place of business where such articles are received and delivered.

Opinion by Assistant Attorney General Moore.

Gentlemen:

I have your letter of May 14th, in which you state:

Schedule 147 of the Revenue Laws of Alabama, 1929, provides in part as follows:

" 'Pressing Clubs: Each person conducting what is commonly known as a cleaning or pressing business, or pressing club, where wearing apparel is cleaned, pressed or dyed shall pay a license * * * .'

"It seems that the method of conducting these businesses has changed somewhat since this act was passed in 1919, and that possibly on account of the regulations of certain cities, for financial reasons, or otherwise, certain concerns have established plants or places where the actual work is performed in the outskirts of the cities or towns in which they are located, and in certain instances possibly even outside. These places, of course, maintain one or more city offices from which all or a major portion of the business is conducted."

You ask my opinion on the following:

"(a) Mr. Jones operates a plant in the outskirts of a certain city, but within the city limits, where cleaning, pressing, or dyeing is done. No customer comes in contact with the plant in any way as there is no office or person maintained there to carry on any transaction, and all customers leave work to be done at one of the downtown agencies operated by Mr. Jones. At each of these offices or agencies, customers may come in, leave work to be done, and then call later for such finished work, paying therefor at the same time. In other words, insofar as the customer is concerned, the transaction is completed at either of such offices or agencies.

"Mr. Jones also maintains a 'call for and deliver' service. In each such instance, the driver of the vehicle calls by the residence or other place of the customer and collects the work to be done, and later makes delivery as directed by the customer, and the customer pays for such work upon delivery.

"Under these circumstances, for which places would Mr. Jones be required to pay licenses?

"(b) Mr. Brown is situated exactly as Mr. Jones, except that Mr. Brown also has an office or person at his plant, so that insofar as the customer is concerned, all transactions may be completed at such plant.

"Under these circumstances, it is, of course, obvious that Brown would be due a license for his plant, but will he also be due a license for each office or agency operated as above?

"(c) Mr. White operates an office or agency in his own name, or some other name, or in the name of the cleaning company, which is operated in another town, or even outside of the State. Insofar as the customer is concerned, every transaction with Mr. White is complete in that he leaves the work to be done at his place, later calls for it, and receives his completed work, and at the same time pays for it.

"Would Mr. White be liable for license?"

In reply I beg to advise you that Schedule 120, Acts 1919, Section 361, provides:

"Pressing Club.—Each person, firm, or corporation conducting what is commonly known as a cleaning or pressing business, or pressing club, where wearing apparel is cleaned, pressed, or dyed, shall pay a license of five dollars in cities and towns of less than ten thousand inhabitants; in cities and towns of ten thousand and less than fifty thousand inhabitants, ten dollars; in cities and towns of fifty thousand inhabitants or more, fifteen dollars."

It is, therefore, apparent that no license is required for operating a cleaning or pressing business or pressing club outside of an incorporated city or town.

Section 363, Acts 1919, page 282, provides that "before any person, firm, or corporation, shall engage in or carry on any business or do any act for which a license by law is required, he shall pay * * * " This Section further provides that such license "Shall not be transferable **nor shall it entitle the holder thereof to carry on any other business or do any other act than that named therein nor at any other location than that therein specified.**" This Section authorizes the issuance of a license for one place of business and if there is more than one place of business by necessary inference an additional license is required.

It is therefore necessary to determine whether the operation of an office or agency where work is left to be cleaned and from which the completed article is delivered is within the contemplation of the statute. While the words in the statute, to-wit: "Where wearing apparel is cleaned, pressed, or dyed," might seem to limit the payment of the license only on plants where the work is actually performed, I cannot believe that such was the intention of the Legislature. It seems that these words are not words of limitation but merely of description or definition and that the license is made on each person conducting a cleaning or pressing business or pressing club. If I am correct in this the liability vel non for the license for the operation of a receiving station such as above described is to be determined by deciding whether a person operating such a place is

operating a cleaning or pressing business or pressing club or if such procedure constitutes doing business. Doing business is defined by Corpus Juris, 19 C. J., page 384, as "any transaction with persons or any transaction concerning any property situated in the State through any agency whatever acting for it within the State."

It seems that this definition amply covers the conducting of business by the operation of a downtown agency and that such operation would be doing business within the meaning and intent of the statute. I therefore, conclude in answer to your specific question:

(a) That Mr. Jones is liable for a license on each of the downtown agencies operated by him.

By the words of the statute he is necessarily liable for license for the place of business where the work is actually carried on.

(b) In my opinion Mr. Brown is liable for license for his plant and also for the offices maintained at other places within the city.

(c) Mr. White, in my judgment, is liable for license on the offices or agencies operated as outlined by you.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 8, 1931

Hon. W. C. Batson,
Judge of Probate, Chambers County,
LaFayette, Alabama.

Tangible personal property owned by resident of one county but having permanent situs in another is taxable in the county where so located.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of May 25, 1931 in which you state:

"A certain contractor, who resides in this County, had a contract for work in Lee County, Alabama, during the year 1929-1930, and while working in Lee County he gave in for taxes certain mules which he was working in said County, and the tax was assessed to him in Lee County, and they are now demanding payment.

"Chambers County, the home County of said contractor also assessed the mules for taxation which he had given in in Lee County, and is also demanding payment of the taxes.

"The question is, where shall this contractor pay his taxes? In Chambers County where he resides or in Lee County where he gave them in? Both Counties are demanding the taxes and the said contractor does not want to pay in both counties, and you will, therefore, please advise as to which County he shall pay the tax."

Your letter does not go into detail as to the length of time such mules remained in Lee County or under what circumstances. I judge, however, from the phrase "a contractor * * * had a contract for work in Lee County, Alabama, during the year **1929-1930**, and while he was working in Lee County" he gave in for taxes certain mules he was working in Lee County," that such mules were located in Lee County for a considerable period of time and not temporarily there or merely in transit on the assessment date.

The rule relating to the taxability of tangible personal property as laid down in Trammell vs. Connor, 91 Ala. 399, and quoted approvingly in Boyd vs. Selma, 96 Ala. 144, and National Dredging Co. vs. State, 99 Ala. 462, is that:

"An analysis and comparison of the several provisions of the Revenue laws show their general scope and import to be, that personal property, susceptible of locality, shall be assessed like real property, in the county in which it has a location partaking of permanency. It is true, the law contemplates that personalty will generally be found in the county of the owner's residence, and is framed upon that general basis; but they also contemplate and provide for cases where personal property has an actual situs in a county other than that of the domicile of the owner.

"Unquestionably, tangible personal property, belonging to a non-resident which has a situs in this State, so as to require the continued protection of its laws, and enjoying its peculiar advantages, is liable to taxation at its locality. The foregoing construction extends this principle to counties of the State, which have their local expenses and benefits.—State vs. Falkinburge, supra."

In the National Dredging Co. vs. State, supra, property of a non-resident contractor was held to be taxable in this State having acquired a status partaking of permanency.

The general rule unquestionably is that tangible personal property is taxable at the residence of the owner, but if it is located elsewhere and such location is permanent in its nature, though not so permanent as real estate, it is taxable in the county where so located.

While the given facts are not full and complete, it seems that the property had acquired a situs permanent in nature in Lee County and the taxes should be paid in that County.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 8, 1931

Hon. W. H. Hawkins,
License Inspector, Baldwin County,
Bay Minette, Alabama.

Same person cannot hold office of License Inspector and member of the Board of Registrars at the same time under Constitution, Section 280.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of May 13th in which you state:

"I have been appointed License Inspector and Tax Agent for Baldwin County, and am also Member of the Board of Registrars.

"I want to know, if I can still hold the office of Registrar and the other office at the same time?

"The duties of tax agent when a salary is paid is for three or four months after the work of registration is over, and there is no conflict in the duties. License Inspectors receive only fees.

"Code 1923, Section 370, provides that registrars shall not hold an elective office during their term, from which we can infer that they can hold a non-elective office."

In reply thereto I advise, in my opinion, you cannot hold the office of License Inspector and Registrar of voters at the same time.

Section 280 of the Constitution provides:

"No person holding an office of profit under the United States, except postmasters, whose annual salaries do not exceed two hundred dollars, shall, during his continuance in such office, hold any office of profit under this state; nor, unless otherwise provided in this constitution, shall any person hold two offices of profit at one and the same time under this state, except justices of the peace, constables, notaries public, and commissioner of deeds."

The office of License Inspector is a public office.

Opinions of Attorney General (Office Edition) March 1st to April 30, 1931, Vol. 3, p. 195.

Section 374 of the Code of 1923, specifically states: "Said Registrars are judicial officers."

Both of these offices are offices of profit and therefore the holding of both by the same person is in contravention of Section 280 of the Constitution.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 9, 1931

Hon. John E. Webb,
Tax Collector,
Center, Cherokee County, Ala.

Tax Collectors in non-resident tax sales should follow the law as it existed prior to the passage of the Walker Act, held unconstitutional by this office.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of May 12th in which you inquire:

1. "How am I to proceed on non-resident tax sale in the limited time?"

2. "Shall I proceed under old law as if the new law has never existed? If so how? As I haven't got the sixty or seventy days now before July 10th. If I do proceed and the Supreme Court decides the new law is O K who pays costs?"

I assume you mean the recent Act of the Legislature known as the Walker Bill, Senate Bill 196, which was declared unconstitutional by this office on May 8, 1931.

In answer to your first question I advise that it is my opinion that you should proceed to these sales as if such law had never been enacted.

The statutes are your entire authority and you should proceed as they provide.

In answer to your second question I advise that should the Supreme Court ultimately hold the Walker Bill valid the question of costs will then be determined.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 9, 1931

Hon. G. L. Malone,
Judge of Probate,
Fort Payne, DeKalb County, Ala.

Service of notice on delinquents, provided for by Section 339 of the 1929 Compilation of Revenue Laws, must be by personal service.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of April 25, 1931, was duly received.

You ask if citations to delinquents as provided by Section 339 of the 1929 Compilation of the Revenue Laws of Alabama (Section 72 of Revenue Act, 1927, Acts 1927, page 139), may be served by registered letter, or does it require personal service of the citation.

In reply will say that the service of the citation required by said Section 339, is personal service. This is always the case unless another method of service is specifically provided. For this service, one dollar and fifty cents is provided.

I know of no statute providing for a license inspector to serve notice by registered mail.

In some cases tax collectors may serve notice by registered mail, but in such cases, they are entitled to a fee of twenty-five cents.—Section 264 of Revenue Act 1919 (Acts 1919, page 359).

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 10, 1931

Hon. Walter K. Smith,
Chief Examiner of Accounts,
CAPITOL.

1. County Superintendent of Education: Not entitled to expense account where he is elected or appointed for a definite term.

2. County Superintendent of Education: Salary cannot be increased or decreased during term.

3. County Superintendent of Education Liable on official bond for monies illegally received as expense allowance.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of May 25, 1931 in which you state that acting under provisions of Local Act 127, Local Acts of Alabama, 1927, p. 52, the County Superintendent of Education for Dale County was elected at the general election held in 1928, and assumed the duties of his office on July 1, 1929. The County Board of Education fixed his salary for the term of office at $3,000.00 per annum, payable monthly, and also undertook by resolution to allow said superintendent an annual allowance for expenses of $600.00 per annum, payable monthly. You further state that after the Superintendent of Education assumed the duties of his office, the County Board of Education undertook to change his salary by reducing the same to $2,000.00 per annum, and also by resolution undertook to grant an annual allowance for expenses amounting to $1,600.00 per annum, payable monthly.

You ask an opinion of this office on the following:

1. Whether the County Board of Education had any authority of law to make any allowance to the County Superintendent of Education.

2. Did the County Board of Education have any authority to reduce the salary of the County Superintendent of Education during his term of office?

3. Is the County Superintendent of Education liable on his bond to the School Funds of Dale County for the money illegally collected as an expense allowance.

Answering your first and second inquiries, I am of the opinion that the County Board of Education had no authority of law to make any annual allowance to the County Superintendent of Education for expenses, nor any right to increase or decrease his salary. Said Superintendent was

elected under the provisions of above mentioned Local Act and his maximum salary and term of office are fixed by said Act.

Section 281 of the Constitution of Alabama, 1901, provides that "the salary, fees or compensation of any official holding any civil office or profit under this state or any county or municipality thereof, shall not be increased or decreased during the term for which he shall have been elected or appointed."

Hence, if the County Superintendent of Education has a term of office within the meaning of said Section 281, Constitution of Alabama, 1901, his salary or compensation cannot be increased during his term of office.

The Act above referred to fixes the term of office and it is my opinion that his salary can neither be decreased or increased during his term, nor can the County Board allow him any additional funds under the guise of an expense account.

Opinions Attorney General, 1928-30, pp. 126, 1007.

I also refer you to the case of **Woodruff v. Beeland**, 127 So. 235, wherein this question is discussed at length. The facts of that case are very similar to those of the instant case. It was held in the case last above cited (1) "That an administrative board, created by statute and charged with duty of devoting public funds to ends prescribed by law, can make only such disbursements as are expressly or impliedly authorized by statute." (2) "No power of administrative board to make disbursements is implied, unless intention to confer it can be seen from entire scheme of legislation regulating the board."

The question of increasing and decreasing the salary of an officer elected or appointed for a fixed term is decided in the case of **McMurray v. County Board of Education** of Franklin County, 112 So. 644. I am enclosing copy of a recent opinion of this office rendered to Hon. Aaron G. Weaver, County Superintendent of Education, Double Springs, Alabama.

In answer to your third question it is my opinion that the County Superintendent of Education is liable on his bond for the money received by him which was not authorized by law to be so paid. "There seems to be no doubt about the proposition, so far as the laws of Alabama are concerned, that when a public officer collects money from a county, as fees or compensations for services rendered by him, and to which fees or compensation he is not legally entitled, such county can maintain a suit for the recovery of the money so illegally obtained by him and receive the same."—**Mobile County v. Williams**, 61 So. 693. The case last above cited deals with this question at length.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 10, 1931

Hon. S. P. Dunn,
Judge of Probate,
Evergreen, Conecuh County, Alabama.

Bottler operating a warehouse in another county from which sales are made liable for wholesale soft drink license.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"Our License Inspector has cited one Mr. J. E. Pipkin of Atmore, Escambia County, Alabama, who runs a Bottling Plant and pays license for same there and who has established a warehouse in Evergreen, Conecuh County, and delivers by truck from here.

"Would he be subject to wholesale soft-drink license in Conecuh County?"

In reply thereto I beg to advise that liability for wholesale soft drink license, provided by Schedule 96½ Section 361, Acts 1919 p. 382 in the case you suggest is to be decided on the particular facts. If the bottler at Atmore maintains a warehouse at Evergreen, merely as a convenience and as a port of delivery for orders received at or sales made from his plant at Atmore in my judgment he would not be liable for the wholesale soft drink license.

On the other hand, if he maintains a warehouse and makes sales, takes orders and in general conducts an ordinary wholesale soft drink business, he would be liable for the license as such.

Biennial Report Attorney General 1928-30, p. 590.

Further, if he handles or sells at wholesale, soft drink products at Evergreen other than those bottled by him he would be liable for wholesale soft drink license regardless of any question of any privileges received under his bottlers license. This is the effect of the opinion in Biennial Report 1928-30, p. 8, holding a wholesale grocery company selling Welch's Grape Juice to be liable for wholesale soft drink license.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 10, 1931

Hon. R. T. Simpson, Jr.,
Circuit Solicitor,
Florence, Lauderdale County, Alabama.

Circuit Solicitor—Suits for county funds on Examiners' reports—Authority to institute.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of May 25, 1931. You state there has been certified to you by the Examiner of Accounts certain amounts alleged to be due by former sheriffs of Lauderdale and Colbert Counties. Two of the accounts seem to be for extra court bailiffs authorized by the then Circuit Judge. The statute provides for only a certain number of bailiffs and the Circuit Judge ordered the sheriff to procure an additional number, and the sheriff, in compliance with the Judge's order, employed an additional number of bailiffs, for the court during its various terms, and for these extra bailiffs drew pay from the county. You state the matter is discussed in an opinion of the Attorney General dated April 19, 1929 and May 7, 1929. You call attention to Sections 751 and 5505 relating to the duties of a Solicitor.

You request my opinion:

(1) Is it necessary first to obtain the authority of the county, through its Board of Commissioners, to file a suit in behalf of the county, after having received from the Examiner of Accounts a statement against a public official?

(2) If it is held that such authority is unnecessary would the Solicitor be authorized to use any discretion as to the filing of the suit when he has reason to believe the county would be opposed to such action. In other words, would the Solicitor be relieved from the statutory responsibility of filing a suit on such an account if the county should by resolution of its Board of Commissioners, request that suit be not instituted?

(3) In the event a suit were instituted on account such as described, would it be necessary to procure the authority of the county, by its Board of Commissioners, to compromise for a certain sum, less than the amount stated by the Examiner, or would the Solicitor be authorized to accept such an offer in compromise as in his judgment would be to the best interest of the county?

(4) There was certified to me about a year ago by the Examiner an account due by the Tennessee Valley Bank at Tuscumbia, Alabama, to Colbert County for interest on county funds deposited with said

bank by the then Treasurer of the County who was Vice-President of said bank. That party was official custodian of the funds but the county made a contract with the bank as to the amount of interest to be paid if the deposits were made with said bank. Suit was filed and a plea in abatement interposed on the ground that the Solicitor was without authority to file such a suit. The question, of course, is to be concluded by a construction of Section 751, Code of Alabama 1923.

The Department of Examiners of Accounts had full authority to conduct the examination.

Sub-section (1) of Section 736, Code of Alabama 1923.

The report of the examiner of the result of his examination having been executed the same comes before the Chief Examiner.

Sections 746, 750, Code of Alabama 1923.

If the defaulting officer fails to settle with the State and County the amount found due in compliance with Section 750, Code, supra, or fails to show cause why the amount should not be collected (See Section 750), then, if the amount due by the officer is in favor of the County, the Chief Examiner must certify to the Circuit Solicitor the amount or amounts due, whereupon the Circuit Solicitor must proceed to collect the same by suit against the officer and his bondsmen, for which **additional** service the Solicitor received ten per cent of the amounts collected, which sum is paid to him out of the county treasury.

Section 751, Code of Alabama 1923.

If the Circuit Solicitor fails to take the proper legal steps required of him by Section 751, supra, to collect any amount thus found to be due from any public officer in favor of the county when the amount so found to be due has been certified to him under Section 751, supra, such Solicitor is guilty of a misdemeanor.

The duties of a Circuit Solicitor are not prescribed by the Constitution, but his duties are statutory.

Section 5498, Code of Alabama 1923.

Ex Parte Lusk, 82 Ala. 519.

The legal machinery to ascertain, so far as the Executive Department of State Government is concerned, the amount due by a public officer, having been definitely set up, the method prescribed therefor having been followed and the duties of the Circuit Solicitor in such matters having been clearly set out, it follows that he must perform his duties as there outlined on penalty of prosecution for not so doing. It is not the business

of the Solicitor to determine executively the amount due. That is the business exclusively of the Examiners' Department and that department, through its head officer, having done so, it is not within the province of the Solicitor to undo that finding by substituting his judgment of what should have been charged a public officer, for the judgment of the official of the State upon whom the duty and authority rests exclusively.

The law does not attempt to prescribe the procedure that shall be followed by the Solicitor in bringing suit in such cases. He is presumed to follow that particular legal form most appropriate to accomplish results in the Courts. In executing his duties thus imposed upon him, he does not await the recommendation of any local court of County Commissioners, but proceeds strictly and promptly in accord with the statutes hereinbefore cited. This answers your first question.

In answer to your second question the Solicitor must bring suit regardless of the wishes of the Board of County Commissioners. He cannot legally delay bringing suit or fail to do so because of the county's being opposed to such or because the local board has petitioned him not to do so.

Answering your third question, it is not necessary in such cases to procure authority from the county or any county officer. Furthermore, the Solicitor would have no authority to compromise the suit except on the approval of the Chief Examiner of Accounts. Otherwise, the Solicitor would be usurping the authority of the Examiner and indirectly setting his findings at naught.

Answering your fourth question, will state that my understanding is that Mr. Henninger was appointed Treasurer for the County under Section 322, Code of Alabama 1923, the Board of Revenue, or like body of the county not being able to designate a county depository as outlined in Article 2 of Chapter 17, Code of Alabama, 1923. Mr. Henninger at that time was an officer of the Tennessee Valley Bank, and acting for it, as I presume he had a legal right to do. He agreed for himself that he would accept appointment as Treasurer for the County, under Section 322, supra, at a monthly salary of $100.00 and that he was to do all the bookkeeping and clerical work. He further agreed for the bank that if he were so appointed the bank would pay the premium on his bond and 5% interest on daily balances. The Department of Examiners of Accounts in pursuance of sub-section (1) of Section 736, Code of Alabama 1923, examined the records of Henninger in said bank, finding that instead. of the accounts of the county in said bank being carried in the name of Henninger, to all intents and purposes the bank was being treated as the legal custodian of the funds as county depository. There seems to be a general mix-up arising out of the agreement reached by the county on the one side and Henninger and the bank on the other. The bank, as I understand it, having been found by the examiners department to be due the county a sum under the agreement mentioned, the report of such was transmitted to the solicitor.

With these thoughts in view it is my opinion that when sub-section (1) of Section 736 is read in connection with Section 751, Code of Alabama 1923, the same shows an intention on the part of the Legislature to clothe the solicitor with authority to institute suits for the recovery of moneys due the county as shown by the report of examiner on an examination he had a legal right to conduct. The word "officer" in Section 751 should be interpreted as to cover persons or agencies such as described in Section 736. From your letter it appears that your authority to institute the suit against the suit against the bank has been challenged. I, therefore, suggest this matter be settled in the courts.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 10, 1931

Hon. E. L. McConnell,
Clerk Circuit Court,
Florence, Lauderdale County, Alabama.

1. Witness fees: When presented. Witness can claim in more than one case a day.

2. Arrest: Sheriff's fee where defendant is bound over to Grand Jury by Justice of the Peace.

3. Issuing a capias: Capias not issued where defendant is bound over to Grand Jury and is either in jail or on bond.

4. Appeal: Defendant convicted in county court and who perfects appeal to circuit court cannot withdraw appeal.

5. Court Stenographer: Fee charged only where stenographer's services are actually used.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of recent date in which you request an opinion from this office on the following matters:

1. How long have State witnesses to claim their attendance?

2. Can witnesses claim per diem in more than one case a day?

3. If a defendant is arrested and bound over to the Grand Jury by a Justice of the Peace, then indicted and convicted in the Circuit Court how is the arrest fee charged?

4. Is a capias supposed to be issued where case is bound over from Justice of the Peace, and defendant is either in jail or on bond?

5. Can a defendant who has been convicted in County Court and who has taken an appeal to the Circuit Court dismiss the appeal before trial.

6. If the answer to question No. 5. is in the affirmative is the defendant to be charged with trial tax and Solicitor's fee in Circuit Court.

7. In civil cases where the judgment was by default, but the judge's bench notes show Jury and verdict is stenographer's fee a proper item of cost?

In answer to your first inquiry I am of the opinion there is no time limiting the filing of claims for witness fees. This opinion is diametrically opposed to an opinion of this office heretofore rendered. Report Attorney General 1928, p. 763.

In the opinion last above cited, it was held that such claims must be filed within twelve months or they would be barred by Section 228, Code of Alabama, 1923, which section is as follows:

"All claims against counties must be presented for allowance within twelve months of the time they accrue, or become payable, or the same are barred, unless it be a claim due to a minor, or to a lunatic, who may present such claim within twelve months after the removal of such disability."

This section applies to claims against the county, that is those claims which it is the duty of the Court of County Commissioners to pass upon. Witness fees, if not charged to the defendant or some other person, are paid out of the fine and forfeiture fund of the county, and the Court of County Commissioners has no control over fines and forfeitures, and can create no claims against the fund. The fine and forfeiture fund is subject to the control of the Legislature; the claims to be paid out of it, their preferences, and the conditions of payment may be modified or changed by the General Assembly, and it is disbursed by the treasurer according to law.

Briggs v. Coleman, 51 Ala. 561,
Sessions & Leary v. Boykin, 78 Ala. 328.

The last cited cases will greatly assist you in understanding this question. However, in many counties there are Local Acts fixing a limitation on the presentation of such claims, but I have not examined the Local Acts, and my opinion is based entirely upon the General Law. You will find this matter thoroughly discussed in Biennial Report of Attorney General 1922-1924, p. 110. I have not dealt with Section 7245, Code of Ala-

bama, 1923, which provides that in certain civil cases certificates must be presented within six years, as your inquiry specifically referred to State witnesses.

In reply to your second question, it is my opinion that witnesses can claim in more than one case a day when they conform with Section 3770, Code of Alabama, 1923, which section is as follows:

> "A witness for the State, attending in more criminal cases than one at the same time, shall only be entitled to fees in one case, to be selected by him while so attending; but if after the case in which he elects to claim his fees is disposed of, his attendance is required in the other case or cases, he shall, for such attendance, be entitled to claim his per diem in such other case, or, if more than one, in the one in which he may then elect to claim his fees; and so on until all the cases in which he is required to attend are disposed of by trial, continuance, or otherwise."

Biennial Report of Attorney General, 1928-30, p. 401,
Biennial Report of Attorney General, 1926-28, pp. 60, 306.

I am also enclosing copies of recent opinions on this matter.

Answering your third question, it is my opinion that the arrest fee is charged as the sheriff's fee. That is four dollars under sheriff's fee if the arrest is for the alleged commission of a felony. I suppose you had in mind Section 10199, Code of Alabama, 1923, as follows:

> "The sheriff is authorized to execute all mesne and final process which is required of constables, and shall receive the same fees and compensation therefor; and he and his sureties on his official bond shall be liable for any abuse of the process that he may execute under this section."

The case of Trapp v. State, 122 Ala. 394, in discussing this matter says:

> "Section 3741 of the Code of 1896 (10199 Code of 1923), which authorizes sheriffs to execute all mesne and final processes which are required of constables, and provides that he shall receive the same fees therefor, has no reference to the execution of warrants of arrest issued by a justice of the peace; since prior to the enactment of said section, the sheriff had full authority to execute said warrants. (Criminal Code of 1896, Section 5209) and for such service is entitled, under the statute, to a fee of two dollars."

At that time two dollars was the fee in felony cases. However, it is now four dollars. Therefore, the charge should be under sheriff's fee.

In reply to your fourth inquiry as to whether or not a capias should be issued when case is bound over from justice of peace and defendant either in jail or on bond. I am of the opinion that a capias should not issue.

A capias as defined by Corpus Juris is "A writ directing the sheriff to take the person of defendant into custody." In other words it is a writ of arrest. Your question is sufficiently answered by Section 3278, Code of Alabama, 1923. "A writ of arrest must be issued by the clerk forthwith after the finding of the indictment against each defendant **who is not in actual custody, or who has not been bailed,** or whose undertaking of bail has been declared forfeited; or it may be issued without an order of court, either in term time or vacation, by the solicitor of the circuit, or by any circuit judge. **But if the defendant is in actual custody, he shall be held by virtue of the indictment, and no writ of arrest need be issued."**

Answering your fifth inquiry, it is my opinion a defendant convicted in county court, and who has appealed to the Circuit Court, cannot withdraw his appeal, and that the cause must be tried by the Circuit Court.

Biennial Report Attorney General 1926-28, p. 288,
Ex Parte Harper, 112 Sou. 96,
Green v. State, 106 So. 683.

Answering your last inquiry, it is my opinion that stenographer's fee would not be a proper item of cost. I infer from your letter that the stenographer was in no way engaged during that case. Section 6738, Code of Alabama, 1923, is as follows:

"In all cases **reported** by an official court reporter or special reporter, there shall be taxed as part of the costs of the case a fee of five dollars for each day or fraction thereof that such reporter shall **be engaged** in reporting a case, to be collected as costs as in other cases, and, when collected, paid by the clerk of the court into the county treasury of the county in which the case is tried."

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 11, 1931

Hon. A. F. Harman,
State Superintendent of Education,
CAPITOL.

Schools—State aid for erection, repair or equipment not allowed where local funds already spent or obligated.

Opinion by Assistant Attorney General McCall.

Dear Sir:

This acknowledges receipt of your letter of April 25, 1931.

You request my opinion:

Under the provisions of Sections 370-386, inclusive, Alabama School Code, 1927, relating to State aid in erection, repairs and equipment of rural school houses, may the State Superintendent of Education approve an application for State aid where prior to the time of the application, the amount of local funds necessary to match the State aid has been expended by the local school, provided that the local school through the County Superintendent of Education presents paid vouchers showing the amount expended and provided also that the equipment so purchased shall be inspected and approved by duly appointed representatives of the State Department of Education.

In answer will say no.

This is very clearly contrary to the provisions of the very sections you cite.

Sections 372, 380, 381, 382, 383, 384 School Code, supra.

Section 372 says: "where it is proposed to" erect, repair or equip a school building the County Board may make application for aid in a certain manner, with a certain showing in order to get the aid. If the Legislature had intended what you suggest it would have so stated.

The actual cash must be on hand to the credit of the particular fund and be unobligated and unspent before you can approve such an application for state aid.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 11, 1931

Hon. Hugh White,
President, Alabama Public Service Commission,
Montgomery, Alabama.

A statute which provides that each utility doing business in this State and subject to the control and jurisdiction of the Alabama Public Service Commission, with respect to rates and service regulations, shall pay annually to the State on or before February 1st of each year, a fee for the inspection and supervision of such business, and that such inspection and supervision fee shall be measured by the

amount of the gross receipts of each such utility for the calendar year next preceding the date fixed for the payment of the same, is a fee covering the year in which said fee is payable and is not a fee covering the year next preceding the date fixed for the payment of such fee; if such utility transfers its properties prior to the beginning of the year in which such fee is payable, the transferee and not the transferer is liable for such fee, although the amount of such fee is measured by the amount of the gross receipts of the transferer, or by the gross receipts of the transferer and the transferee, for the calendar year next preceding the date fixed for the payment of the same.

Opinions by Assistant Attorney General Carmichael.

Dear Sir:

I acknowledge receipt of your letter of March 25, 1931, which is in part as follows:

"The following question has arisen in connection with the collection of such inspection and supervision fee, namely: Prior to the beginning of the current year A. B. Co., which was engaged in the utility business in Alabama during 1930, transferred its properties to C. D. Co., and the A. B. Co. will not be doing business in Alabama durin the year 1931. The question is,—is the A. B. Co. liable for the payment on February 1st of 1931, of the fee for the inspection and supervision of its business? The question may be stated, also in this way: Is the inspection and supervision fee required to be paid by a utility annually to the State, on or before February 1st. of each year, payable for the inspection and supervision of such business during the preceding year, or for the year during which such fee is payable?"

Your inquiry involves a construction of Sections 9765 and 9766 of Vol. 4 of the Civil Code of Alabama of 1923.

Section 9765 provides that each utility doing business in this State and subject to the control and jurisdiction of the Public Service Commission, with respect to its rates and service regulations, shall pay annually to the State on or before February 1st of each year, a fee for the inspection and supervision of such business. This Section further provides that **such fee shall be measured by the amount of the gross receipts of each such utility for the calendar year next preceding the date fixed for the payment of same.**

Section 9766 provides that on or before January 20th of each year, every such utility shall file with the Commission a statement, under oath, of the amount of the gross receipts of such utility for the last preceding calendar year.

The A. B. Company is not liable for the payment on February 1, 1931, of the fee for the inspection and supervision of its business. A fair con-

struction of the two statutes in question, can, in my judgment, lead to no other conclusion. I am convinced that the Legislature intended that the fee shall cover the year 1931 and not the year 1930. It is presumed that the A. B. Company paid the fee covering the year 1930 on February 1, 1930.

I am convinced that there is but little, if any, ambiguity in these two statutes, when construed together. If there is ambiguity in a statute imposing a tax, such ambiguity must always be resolved in favor of the taxpayer. Tax statutes are not to be construed beyond the natural import of the language and never construed as imposing burdens where the interpretation is doubtful. In construing tax statutes, as well as other statutes, it is first necessary to ascertain the liegislative intent in their provisions, and next to give effect to that intent in applying it to the subject matter. The underlying principles of all construction is that the intent of the Legislature shall be sought in the words employed to express it, and that when found, it shall be made to govern, not only in all proceedings which are had under the law, but in all judicial controversies which bring its proceedings under review. In construing tax statutes the substance and not the form is to be considered. Beyond the words employed, if the meaning is plain and intelligible, as I am convinced they are in the case under discussion, neither officer nor court is to go in search of the legislative intent, but the Legislature must be understood to intend what is plainly expressed, and nothing then remains but to give the intent effect.

If the A. B. Company transferred its properties to the C. D. Company prior to the beginning of the year 1931, the fee cannot be collected from the A. B. Company but should be collected from the C. D. Company, if the C. D. Company owned the properties on February 1, 1931. If the utility was property of the A. B. Company all of the year 1930, then the fee should be measured by the gross receipts of the A. B. Company for the year 1930. If the utility was the property of both the A. B. Company and the C. D. Company during the year 1930, and the property only of the C. D. Company on February 1, 1931, then the fee to be paid by the C. D. Company would be measured by the gross receipts of both the A. B. Company and the C. D. Company during the year 1930.

Section 9705 does not provide that the fee shall cover the year next preceding the date fixed for the payment of the same. This Section does provide that the fee shall be paid on or before February 1st of each year and provides that such fee shall be measured by the amount of the gross receipts for the calendar year next preceding February 1st. If the Legislature had not so intended, it would have provided that, although the fee is payable on February 1st, the fee covers the preceding year, I am convinced that such was not the intent of the Legislature.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 12, 1931

Hon. J. D. Snodgrass, Mayor,
Scottsboro, Alabama.

In the exercise of his police power or for the purpose of raising revenue, one or both, the town of Scottsboro, Alabama, may fix and collect a license from a bus company which maintains an office in the town of Scottsboro and which bus company operates its passenger line upon the streets of said town, the said bus line operating between Scottsboro, Alabama, and Chattanooga, Tenn.

In the exercise of its police power or for the purpose of raising revenue, one or both, the town of Scottsboro, Alabama, may impose a license upon a ticket office conducted by a bus company, which bus company operates upon the streets of the town of Scottsboro and transports passengers between Scottsboro, Ala., and Chattanooga, Tenn.

In the exercise of its police power or for the purpose of raising revenue one or both, the town of Scottsboro, Alabama, may enforce payment of both of the licenses mentioned herein above, either by the enforcement of the lien provided by statute or by criminal prosecution of the agent of the corporation violating said ordinance.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I beg to acknowledge receipt of your letter of May 19th as follows:

"There is a bus company operating upon a regular schedule between Chattanooga and Huntsville, which maintains an office in Scottsboro. The office of the company is located in a local drug store where tickets are sold to passengers desiring to travel upon the busses. Passengers are solicited upon the streets of Scottsboro and regular hours for arrival and departure are published.

"Upon the above statement of facts, kindly advise us as follows:

"1. Can the City of Scottsboro lawfully impose a license or privilege tax upon such bus company for the operation of said motor vehicles upon the streets of Scottsboro?

"2. Can the City of Scottsboro lawfully impose a license or privilege tax upon the ticket office of said bus company?

"3. Can the City of Scottsboro enjoin the operation of said busses until they comply with the ordinance requiring the payment of privilege tax before engaging in business in said City of Scottsboro?"

In answer to your first question, I beg to refer you to Article 32, Municipal Corporations, of the Code of Alabama of 1923, with particular ref-

erence to Sections 2152 (1), 2154, 2162, 2166, 2167, 2168, 2169 and 2172. These sections provide:

"2152. Licenses generally,—Any city or town within the State of Alabama may fix and collect licenses for any business, trade or profession done within the police jurisdiction of such city or town and without the corporate limits thereof; provided, however, that the amount of such licenses shall not be more than one-half the amount charged and collected as a license for like businesses trade or profession done within the corporate limits of such city, fees and penalties excluded. Provided that this section shall not have the effect to repeal or modify the limitations provided by Sections 2157, 2158, 2159, 2160, 2161, 2162 of the Code of Alabama of 1923, relating to railroads, express companies, sleeping car companies, telegraph companies, telephone companies and public utilities."

"2154. License to business, trade, profession, etc.—To license any exhibition, trade, business, vocation, occupation, or profession not prohibited by the constitution or laws of the state, which may be engaged in or carried on in the city or town; to fix the amount of licenses, the time for which they are to run not exceeding one year, and provide a penalty for doing business without a license, and to charge a fee of not exceeding fifty cents for issuing each license; to require sworn statements as to the amount of capital invested, or value of goods or stocks, or amounts of sales or receipts where the amount of the license is made to depend upon the amount of capital invested, or value of goods or stocks or amount of sales or receipts, and to punish any person or corporation for failure or refusal to furnish sworn statements or for giving of false statements in relation thereto. The license herein authorized as to persons, firms or corporations engaged in business in connection with interstate commerce shall be confined to that portion within the limits of the state, and where such person, firm or corporation has an office or transacts business in the city or town imposing the license. The power to license conferred by this article may be used in the exercise of the police power as well as for the purpose of raising revenue, one or both."

"2162. Public utilities.—The maximum amount of privilege or license tax which the several municipalities within this state may annually assess and collect from each person, firm or corporation operating a public utility, such as an electric light or power plant, street or interurban railroad operated by electricity or other motive power waterworks, gas company, or heating, or other public utility, except telephone and telegraph companies, railroad and sleeping car companies, and express companies, which are otherwise licensed, shall not exceed two per cent of its gross income in the municipality. This section shall not affect any existing contracts between any municipality and any public utility operating therein."

"2166. Licenses for year or part of year.—In case the license of any business, trade, occupation or profession be taken out after the first day of July, only one-half of the license shall be charged and collected, except those subjects for which daily, weekly, or monthly, quarterly, or semi-annual licenses are provided. No license shall be transferred, except with the consent of the council, and no license shall be transferred more than once, and never from one business to another."

"2167. License; unlawful to engage in business without.—It shall be unlawful for any person, firm, or corporation, or agent of a firm or corporation, to engage in any of the businesses or vocations in a city for which a license may be required without first having procured a license therefor, and any violation of this article, or of any ordinance passed hereunder, fixing a license, shall be punishable by such fine as may be fixed by ordinance, not to exceed the sum of one hundred dollars for each offense, and by imprisonment, not exceeding six months, either or both, at the discretion of the court trying the same, and each day shall constitute a separate offense."

"2168. License designates place of business.—Any person desiring to engage in any trade, business, profession, or occupation for which a license is or may be required, shall designate the place at which such trade or business, or occupation, or profession is carried on, and the license to be issued hereunder shall designate such place, and such license shall authorize the carrying on of such trade, business, occupation, or profession only at the place designated unless he shall be granted permission by the council to move his place of business, trade, occupation, or profession to another place in the city, and in that event such permission shall be endorsed by the clerk on such license. The same license shall be charged and collected for all portions of the city or town. In cities of one hundred thousand or more population, according to the last federal census, the governing bodies may grade or classify licenses according to location of businesses or occupations engaged in. Nothing contained in this section shall authorize the increase of any license tax of such municipal corporations, which is now or may hereafter be fixed by statute."

"2169. License for two or more businesses.—Any person, firm, or corporation dealing in two or more of the articles, or engaged in two or more of the businesses, vocations, occupations, or professions for which a license is or may be required, shall take out and pay for a license of each line of business, vocation, occupation, or profession."

"2172. Liens for license or privilege tax.—On all property, both real and personal, used in any exhibition, trade, business, vocation, occupation, or profession, for which a license is or may be required, municipal corporations shall have a lien for such license, which lien shall attach as of the date the license is due and shall be superior to all other liens, except the lien of the state, county and municipal

corporations for taxes, and the lien of the state and county for license. Such lien may be enforced by attachment or in equity."

In answer to question one, I beg to advise you that the Town of Scottsboro, by and through an ordinance of the town, properly prepared and properly adopted, has ample authority under Article 32, supra, and under the sections referred to above, and in the exercise of its police regulations or for the purpose of raising revenue, to impose a license on the bus company operating on the streets of Scottsboro and transporting passengers between Scottsboro, Alabama, and Chattanooga, Tenn. The bus line maintains an office in the Town of Scottsboro and operates its busses through and upon the streets of Scottsboro. It has been definitely decided that a reasonable, graduated license fee imposed by a State on motor vehicles used in interstate commerce does not constitute a direct burden on such commerce. The State, by statute, has authorized the Town of Scottsboro to impose such a license.

A State, and in like manner a municipality, may lawfully require a license for the operation upon its highways of motor vehicles moving in interstate commerce, in the absence of national legislation covering the subject. In this connection, I beg to refer you to the following authorities:

Michigan Public Utilities Co. v. Duke, 266 U. S. p. 570;
Interstate Busses Corp. v. Holyoke St. Ry. Co., 273 U. S., p. 45;
Buck v. Kuykendall, 276 U. S., 307;
Geo. W. Bush & Sons Co. v. Maylay, 267 U. S., p. 317;
See Motor Vehicles, L. R. A. & A. L. R. Digests, paragraph 105;
Postal Telegraph Cable Co. v. Fremont, 255 U. S., p. 124.

It must be understood that while your town may lawfully impose the license in question for the right of doing business within the borders of Scottsboro, such power must be exercised with due relation to interstate commerce.

In answer to your second question, I am of the opinion that the Town of Scottsboro may also enforce, by ordinance properly prepared and properly adopted, the bus company to procure a license from the Town of Scottsboro to conduct the ticket office in question. In this connection, I beg to refer you to Section 2169, referred to above.

In answer to your third question, I beg to refer you to Section 2172, referred to above, which provides the means or method of enforcing the lien created by the license. The lien may be enforced by attachment. The ordinance may also be enforced by criminal prosecution of the agent of the corporation violating the ordinance. The ordinance in contemplation would be a criminal law. Courts of equity will not interfere for the punishment or prevention of a merely criminal act.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 12, 1931

Hon. R. T. Simpson, Jr.,
Circuit Solicitor,
Florence, Lauderdale County, Alabama.

Witnesses—Criminal Cases: Mileage and expenses from residence outside of State to State line—not properly chargeable against counties.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of May 25, 1931. You state there are some criminal cases pending in the Circuit Court of Lauderdale County involving alleged conversion of funds by certain city officials. In one of these cases it is necessary to have several witnesses from outside the State of Alabama before the State can make out a complete case.

You request my opinion:

1. Has the county authority to pay for mileage and attendance of State's witnesses when they are beyond the jurisdiction of the court?

2. Should these witnesses refuse to attend can the Attorney General's Department come to my assistance?

Answering your first question will state that the State's subpoena reaches only the bounds of Alabama. A witness coming to the place of trial from without the State is entitled to mileage only from the State line and the defendant can be taxed with this mileage only from the State line to place of trial.

Opinion Attorney General August 25, 1925, Vol. 2, 1925, Office Edition, p. 194;
Opinion Attorney General, April 29, 1926, Vol. 1, 1926, Office Edition, p. 199;
Opinion Attorney General, March 13, 1926, Vol. 1, 1926, Office Edition, p. 132;
Opinion Attorney General, June 17, 1927, Vol. 2, Office Edition, p. 196;
Opinions Attorney General, 1928-30, pp. 763, 764;
Opinions Attorney General, 1908-10, p. 145;
Sections 3762; Articles 1, 2 and 3, Ch. 250 of Vol. 2, Code of Alabama, 1923, (Secs. 5616-5631 inc.)

The Code Sections authorizing compensation to witnesses appearing in criminal cases apply only to those witnesses who appear in answer to **compulsory** process.

There is no compulsory process for obtaining witnesses in State Courts in criminal cases, beyond the court's jurisdiction. The court's jurisdiction at most extends to the State's boundary line.

Redmond v. State (Ala.) 59 So. 181.

Under Section 865, Code of Alabama, 1923, the Attorney General, with the Governor's approval, may incur such expenses as may be necessary "in investigations of the criminal law," and "in the prosecution of crime." This is payable out of the appropriation provided by Section 867, Code supra.

The Governor is given an annual Contingent Fund and by the Constitution is bound to see that the laws of the State are faithfully executed.

Therefore, the Attorney General, with the approval of the Governor, as above stated or the Governor himself out of his Contingent Fund, may arrange for expenses of State witnesses to State line in instances such as you mention.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 16, 1931

Dr. J. N. Baker,
State Health Officer,
CAPITOL.

Licenses—Physician's license cannot be issued to one who has not first obtained certificate to practice medicine.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of May 25, 1931 in which you inquire whether or not a physician's license can be issued to one to practice medicine, who has not first complied with the rules and regulations relative to obtaining a certificate to practice medicine.

I am of the opinion that your question should be answered in the negative.

Schedule 57 of Section 334 of Compiled Revenue Laws of 1929. (Acts, 1927, p. 139, Section 9) provides for the issuance of licenses to those engaged in the practice of medicine.

I am of the opinion that said schedule presupposes the issuance of licenses only to those who are **legally** engaged in the practice of medicine.

In order for one to be legally engaged in the practice of medicine, the provisions of Chapter 52 (Section 2836-2894) Code of Alabama 1923, relative to holding a certificate to practice medicine, must be complied with. Any person who attempts to do so without first having obtained a certificate of qualification from the State Board of Medicine Examiners shall be guilty of a misdemeanor.

Section 5191, Code of Alabama 1923,
Robertson vs. State, 212 Ala. 459.

A physician's license issued to any one, who is not entitled to legally engage in the practice of medicine, would, therefore, be of not force and effect.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 16, 1931

Mr. T. F. Griffin,
Sheriff,
Etowah County,
Gadsden, Ala.

By Section 10199 of Code, 1923, the Sheriff has both the authority and duty to execute mesne or final process from a Justice of the Peace Court, when placed in his hands for execution.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of April 28th, 1931, was duly received.

You ask if it is the duty of the sheriff of a county to serve and execute process from a Justice of the Peace Court.

In reply will say that Section 10199 of the Code, 1923, which is the same as was Section 731 of the Code of 1876, provides as follows:

"The sheriff is authorized to execute all mesne and final process which is required of constables, and shall receive the same fees and compensation therefor; and he and his sureties on his official bond shall be liable for any abuse of the process that he may execute under this section."

In construing this section, in the case Mickle et al v. Montgomery, the Supreme Court of Alabama, speaking through Chief Justice Brickel, says:

> "Originally, all civil process issued by a justice of the peace, except in proceedings for the forcible entry and detainer, or the unlawful detainer of lands, could be served or executed only by a constable; the service or execution of such process, was not within the authority and duty of the sheriff. By an act approved Feb. 26, 1875, which formed section 731 of the Code of 1876, and now forms section 811 of the present Code, it is declared: 'The sheriff is authorized to execute all mesne and final process which is required of constables and shall receive the same fees and compensation therefor, and he and the sureties on his official bond shall be liable for any abuse of process that he may execute under this section'. The operation and effect of the statute is that in the execution of all mesne and final process which constables have been required and authorized to execute, the duty and authority of the sheriff is co-extensive with that of the constable.
>
> "Statutes authorizing the execution of such process may have nominated a constable only as charged with the duty. Such statutes are in pari materia with the succeeding statute conferring on the sheriff the duty and authority co-extensive with that which they conferred on a constable, and must be read and construed in connection. The statute authorizing the levy on lands of an execution issued by a justice of the peace, was in existence long prior to the statute authorizing the sheriff to execute mesne or final process issued by a justice. Naturally, as a constable only then had authority to levy executions issued by a justice, it designated the constable as the officer to make the levy. But the subsequent statute intervened, and when the two are read in connection, it is obvious that while the duty and authority of the constable is not taken away, the duty and authority of the sheriff is concurrent and coextensive. The levy and return by the sheriff of the execution was in proper form, and a legal basis for the orders of sale rendered by the circuit court."

It is clear that when mesne or final process from the Justice of the Peace Court is placed in the hands of the sheriff for execution, the sheriff has both the duty and authority to execute it.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 17, 1931

Dr. A. F. Harman,
Superintendent of Education,
Montgomery, Ala.

A local bill which has been indefinitely postponed by one of the Houses of the Legislature cannot be re-introduced without being advertised the second time.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I have your letter of June 4, 1931 as follows:

"I am requested to present to you for your opinion the following question. 'If a local bill is indefinitely postponed by one House of the Legislature, can it be re-introduced into the same House and started back through the Committees as an original bill without being advertised the second time?'"

The purpose of advertising a local bill is to provide ample notice of the proposed legislation. The bill is of local interest. The people in the locality affected are given an opportunity to appear and protest the passage of the bill or urge its passage.

No special, local or private law can be passed by the Legislature unless notice of the intention to apply therefor shall have been published in the manner set out in Section 106 of the Constitution. While the bill which is re-introduced may be exactly like the bill which has been indefinitely postponed, it is nevertheless a new, separate and distinct bill. When such a local bill is re-introduced, the bill is designated by a new number and is, in legal contemplation, a new, separate and distinct bill and should be advertised in the manner set out in Section 106 of the Constitution.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 17, 1931

Hon. A. F. Harman,
Superintendent of Education,
CAPITOL.

Under Act approved June 6, 1931, Court of County Commissioners or like governing body may use convict labor for janitorial service in and about public school buildings.

Opinion by the Attorney General.

My Dear Sir:

This is to acknowledge the receipt of your letter of June 13th, in which you inquire whether or not, under the West Bill, approved June 6, 1931, courts or county commissioners or like governing bodies may use convicts as janitors for the public schools of the county.

In my opinion, it was clearly the intention of the above mentioned bill, that convicts could perform such services.

This of course applies to cases where the counties have not contracted away their right to the use of convicts to the State Board of Administration.

Hoping the above expression furnishes you the desired information, I am

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 17, 1931

Hon. G. P. Butler,
Judge of Probate, Lee County,
Opelika, Ala.

Person operating a dance hall and swimming pool outside corporate limits of a town is not operating an amusement park within the contemplation of Schedule 5, Acts 1919, page 282, Section 361.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of June 4, 1931, in which you state:

"There is a place within three miles of Phenix City, Alabama, which remains open for the summer months at which place there is a swimming pool and a dance hall. Admission is charged for both.

"The License Inspector has cited this place to take out privilege license for an amusement park.

"There is no license on dancing outside of city limits and there is no license on a swimming pool anywhere. This being true and there being no other devices for amusement such as merry-go-round, roller coaster etc., I do not think that Schedule 8 for amusement parks will hold in this case.

"This place does not remain open all the year but just during the summer months.

"Please give me your opinion as to whether such a place should be licensed as an amusement park or not at your very earliest convenience."

In reply I beg to advise that in my opinion, under the facts stated by you, this party is not liable for license for amusement park within the contemplation of Schedule 5, Acts, 1919, page 282, Section. 361.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 17, 1931

Hon. L. H. Reynolds,
Judge of Probate,
Clanton, Chilton County, Ala.

Commissioners Courts are authorized to care for dependent, neglected or delinquent children within the County.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of June 2, 1931 in which you state that you have in your county six orphan children who have neither father nor mother nor any one else to care for them, that they range in age from seven months to twelve years, that they have been examined and found to be tubercular and therefore cannot be placed in orphanage or home. You request my opinion. Can the Commissioners Court make an appropriation for their board and upkeep?

It is my opinion that your Commissioners Court under Section 3537, Code of Alabama 1923 may make such appropriation. This section provides among other things:

"* * * * Or, the court may authorize the boarding out of the child in some suitable family home in such manner as is now, or may hereafter be provided by law, or may arrange by voluntary contribution or otherwise for the board and care of the child until suitable provisions can be made for the placing of such child elsewhere * * * *."

I would suggest that in making this provision that Section 3537 supra be read carefully as it is long and contains many provisions, but I think the portion of this section quoted above if read and construed in connec-

tion with the whole section authorizes the Commissioners Court or Board of Revenue or like governing body to make such appropriation.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 18, 1931

Hon. P. A. McDaniel, Jr.,
County Superintendent of Education,
Clayton, Barbour County, Ala.

County Boards of Education may be liable for costs when engaged in litigation.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of June 4, 1931 in which you state:

"The question of legality of payment of court costs by County Boards of Education has been raised in this county. Please inform me.

"(1). Does the law make it mandatory that county boards of education pay court costs?

"(2). May county boards of education pay court costs assessed against them?

"(3). If the former question is answered in the negative and the second is in the affirmative, is it customary for county boards of education to pay court costs assessed against them?"

Answering your first and second inquiry: it is my opinion the power given county board of education under Section 132, Alabama School Code 1927, p. 57, to sue carries with it the implied right to be sued. It was so held in the case of Kimmons v. Jefferson County Board of Education, 204 Ala., p. 384; Board of Education of Escambia County v. Watts, 19 Ala. p. 7. This being true it naturally follows if the County Board has the right to sue and be sued and is not successful in its litigation it would be responsible for the costs as other unsuccessful persons or agencies. When a County Board of Education becomes a party litigant in any cause and fails whether as plaintiff or defendant it should pay the costs of such litigation.

Answering your third question I am not informed as to what is customary as to Boards of Education paying court costs. I do not see that

custom would have anything to do with it, as the only question that could arise would be their responsibility for costs and not what may or may not be the custom.

In conclusion permit me to say that no costs can be paid out of funds which either by statute or legislative act are limited in their use to other or different purpose or purposes.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 18, 1931

Hon. J. W. Rutland,
Tax Assessor, Colbert County,
Tuscumbia, Alabama.

Assessments—Property is assessed by purchaser at foreclosure sale rather than by holder of statutory right of redemption.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of June 10, 1931 in which you state as follows: The purchaser of certain property, at a foreclosure sale, attempts to assess said property as acreage. In the mean time, the original mortgagor, who holds the statutory right of exemption, but before the time expires, signs and files a plat or map in the office of the Judge of Probate subdividing said property into lots and blocks.

You request my opinion as to whether or not you should assess the property as acreage or as lots.

I am of the opinion that you should assess the property as acreage in the name of the holder of the legal title, viz: the owner under the foreclosure deed.

The foreclosure deed conveys legal title to the purchaser thereof.—Section 9014, Code of Alabama 1923.

All the original mortgagor has in the property is mere statutory right, viz: the statutory right of redemption within two years.—Section 10140, Code of Alabama 1923.

Section 10358, Code of Alabama 1923 provides that a plat or map of subdivision of property must, among other things, be **signed by the owner,** his duly authorized agent, administrator, attorney, or guardian, or ac-

knowledged by such owner, agent, or attorney, in the same manner as deeds are required to be acknowledged.

In the instant case, the purchaser at the foreclosure sale is the owner of the property and his signature is essential to a valid subdivision of said lands. A plat or map recorded without the signature of the true owner, is, in my opinion, void and without force and effect.

In view of the above, I am of the opinion that the property should be assessed as acreage in the name of the true owner, viz; the purchaser at the foreclosure sale or his assignee.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 18, 1931

State Tax Commission,
CAPITOL.

Attention: Mr. S. C. Crockett.

1. License Inspectors entitled to one citation fee where several gasoline pumps, located at same place.

2. Probate Judge entitled to only one license fee under foregoing.

3. Same rule applies to barber shops and pool tables.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of June 8, 1931, in which you state:

"Section 1, page 139, Acts 1927, and Section 363, page 282, Acts 1919, provide that, before engaging in certain businesses or occupations for which licenses are levied, the license shall be procured, and in the latter, it is stated '* * * and upon payment of such amount and a fee of fifty cents to the Probate Judge for the issuance of such license.'

"Section 72, p. 139, Acts of 1927, provides 'All citations to delinquents shall be served by any lawful officer, or by the License Inspector, or his deputy, who shall be allowed as a fee one dollar and a half for each citation served to be taxed against the delinquent.'

"The question now arises and your opinion is asked as follows:

"(a) In the case of a party who is operating a filling station with four pumps, without license, shall the License Inspector issue to this party four citations, one covering each pump, or one citation, covering the four pumps; and shall the Probate Judge issue all four pumps on one license form only, collecting only fifty cents as a fee, or shall the Judge issue a license for each pump on a separate form and collect fifty cents for each four forms, and how many one dollar and a half citation fees shall he collect for the License Inspector?

"Section 20, p. 139, Acts 1927, provides for a license on 'Each person, firm or corporation operating for profit a gasoline filling station or pump * * * shall pay the following:' and there then follows various amounts 'for each pump or filler.'

"Your opinion is also requested in each instance as above and in addition thereto on barber chairs and billiard tables, Schedules 14, 17 and 86, of Section 361, p. 282, of the Acts of 1919."

The language of Section 20, Acts 1927, page 139, is as follows: "Each person * * * operating a gasoline filling station or pump."

The language, I think, indicates that while the tax is measurable by the number of devices or pumps used and to that extent is a tax on the device itself, necessarily any citation or prosecution would be against the operator.

In that event the citation should be issued against him, naming the number of pumps or fillers on which a license has not been paid. Likewise, the Probate Judge should issue a license indicating thereon the number of pumps or fillers covered by it located at the same place. As there is only one proper citation, and one license issued the License Inspector and the Probate Judge are entitled in my opinion, to only one fee.

The same reasoning and conclusion applies to barber shops (Schedule 14, Acts 1919, Section 361, page 282) very clearly.

The reasoning while not so clear applies, I think, to billiard and pool tables, Schedules 17 and 86, Act 1919, Section 361, page 282. While the license is on the table, the license schedules must be construed along with the Act regulating billiard rooms and enforcement proceeding are necessarily against the operator. It would be an injustice and a burden to require more than one citation fee and one license fee to be paid where the same general license subject is being enforced. If the subjects of taxation were entirely different, citations for each would be necessary, but where the subject is treated under one Schedule and the amount only is variable according to the number of devices used, I find no authority or reason for issuing more than one citation, or the payment of more than one fee for issuing the license.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 18, 1931

Dr. J. N. Baker,
State Health Officer,
CAPITOL.

Health—Inspection and regulation of out-of-state foodstuffs and beverages coming into our borders.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of May 29, 1931, relative to authority of Health Department in the matter of regulating and controlling out-of-state foodstuffs and beverages coming into our borders.

You state that the State Board of Health has prescribed various rules and regulations relative to regulations of foodstuffs and beverages. You also state that several inspections of factories have been made in other states. That these inspections have been made with the approval of State and Health officials, also that submission to them has never been mandatory, but proprietors have been informed of the nature of the regulations, and accorded the service of an inspection or instructed to discontinue the shipment of their products into this State.

You inquire as to whether or not the state has authority to enter other states and make inspection of factories that ship foodstuffs into this state.

I am of the opinion that your question should be answered in the negative.

It is without the power of the state to make inspection mandatory without its territorial borders. A state can make an inspection of the article before same is sold within the state, but a state is without power to exclude a food which is generally recognized as wholesome and pure. Said inspection can be consummated by inspection of samples, labels, and printed certificates of other state health departments, etc.—See 12 Corpus Juris, page 60, also 26 Corpus Juris 753, etc., 32 Corpus Juris, 93, etc.

In the instant case there is no way for the state to enforce inspection of factories without its territorial limits, but an inspection may be made of the products before same shall be allowed in the state, so long as said regulations are reasonable and do not interfere with the sale of articles generally recognized as pure food products.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 19, 1931

Hon. Chas. C. Greer,
Superintendent of Insurance,
CAPITOL.

Mutual Aid Association doing a funeral or burial business in this State cannot make conditions in a policy contract other than those set out in the policy.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of April 21, 1931, in which you state:

"The Service Insurance Company, of Aninston, Alabama, is licensed as a mutual aid association and is doing a business in this State which is known as a funeral or burial business. It has been issuing policies on members of a family under which it terms a group policy. The application contains spaces for a number of applicants and they state that this form of application is used where insurance is to be issued on two or more members of the same family. This same application is also used in cases where only one person is to be insured.

"The same form of certificate is used in all cases whether the individuals are together in a family group, or whether only one person is sought to be insured. The officials of the company state that separate policies or certificates are used as a matter of convenience. Reference is made in the certificate to the application which is made a part of the agreement.

"It has been the practice of the company to refuse to accept premiums on members who are over seventy years of age when the members at the lower ages in the same group wish to withdraw.

"The company has been issuing these policies for three and one-half years under permission from former Deputy Superintendent R. P. Coleman and the company states that they would not have issued these policies at such advanced ages had they not been given permission by the Bureau of Insurance to include in the group with these older members younger members of the same family and with the understanding with the Bureau of Insurance that the younger members could not cancel their insurance without the older members also cancelling their insurance."

You ask my opinion on the following:

"Can the Service Insurance Company, under its contract with its policyholders, refuse to accept the premiums on members who are

seventy years of age and over when the younger members of the family drop their insurance with the Service Insurance Company?"

In my opinion the Company cannot.

If I understand the acts correctly a joint application is made by several members of a family and the rate on each individual computed according to the rates set out in the pamphlet entitled "Rules and Regulations." Thereupon individual policies are issued to each individual with the rate inserted accordingly. You attach copy of the policy. I have read the same carefully and no where do I find any condition expressed therein, that the company's liability is dependent upon terms other than therein expressed. The only reference that could possibly have any bearing is in paragraph 6 on back of policy, which sets out the rates and refers to "family rates." I do not find any provision that the company's liability on a particular policy is conditioned upon other members of a group or family, retaining their insurance.

So far as appears, the policy contains the entire contract, and paragraph 10 so provides.

It seems that this situation comes within the provisions of Section 8371 of the Code of 1923 which says:

> "Contracts of insurance to be in plain language, free from ambiguity; rebates on premiums prohibited; penalty.—No life, nor any other insurance company, nor any agent thereof, **shall make any contract of insurance, or agreement as to policy contract, other than is plainly expressed in the policy issued thereon**; nor shall any such company or agent pay or allow, or offer to pay or allow, as inducement to insurance, any rebate of premiums payable on the policy, nor shall any particular policy holder of the same class be allowed any advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever not specified in the policy contract of insurance."

If therefore, without including such condition in the policy, the company is attempting to cancel B's policy because A has failed to keep up his dues, it is without authority so to do. The form of policy as submitted by you does not so provide and the policy is the contract. When issued it constitutes the entire contract between the insurer and the insured and both are equally bound by its terms and conditions.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 22, 1931

Hon. A. L. Tyson,
License Inspector,
Montgomery, Ala.

Proprietor of dry cleaning company employing fifteen or twenty people not entitled to exemption under Act No. 117, approved March 9, 1931.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"The Alabama Dry Cleaning Co., of this City claims that they are exempt from license because their proprietor, Mr. W. H. Warrick, is a World War Veteran. This concern employs 15 to 20 people and operates also three or more sub-stations. Will you please advise if they are exempt. Also advise if Mr. Warrick can obtain a license free to operate one place and pay on the sub-stations."

In reply, I advise that Mr. Warrick is, in my opinion, not entitled to the exemption.

The Act No. 117, approved March 9, 1931, requires that the exemption from license must be for a business "which may be carried on mainly through the **personal efforts** of the licensee, and as a **means of livelihood.**"

Under the facts set out by you the business is not such as may be carried on mainly through the efforts of the licensee, nor does he so conduct it. He, therefore, is not entitled to any exemption whatever under this Act.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 22, 1931

Hon. W. L. Haigler,
Chairman, Board of Revenue,
Lowndes County,
Hayneville, Ala.

County Board of Revenue is authorized under Section 6757 of the Code of Alabama, 1923 to condemn gravel pit for road building and maintenance purposes.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I beg to acknowledge receipt of your letter of June 10, 1931 as follows:

> "Please advise me if Lowndes County can condemn for public road use, gravel owned by private parties wherever found in the county. The price we are now paying is 2 cents per cubic yard at the pit, which is reasonable, but it is greatly to the County's interest to buy the land on which the gravel is located, in our opinion."

In answering your inquiry, I beg to refer you to Section 6757, Volume 3 of the Code of Alabama 1923, at page 400, as follows:

> "Purchase or condemnation of road building and maintenance material.—Courts of county commissioners, boards of revenue or other like governing bodies of the counties of this state may acquire by purchase or by condemnation, land necessary for drainage ditches and borrow pits, lime and stone quarries, clay and clay pits, sand and sand pits, chert and chert pits, gravel and gravel pits, together with any and all other materials of every character that may be necessary or essential or desired in the construction and maintenance of highways and bridges, and may tap and draw material from the same and such road right of way as may be necessary for ingress or egress to and from such material. The reasonable market value, if any, of such land and material to be paid for same."

It is my opinion that the Board of Revenue of your county has ample authority under the Section just quoted to condemn the gravel pit in question.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 22, 1931

Hon. T. O. McConnell,
County Commissioner,
Fayette, Ala.

Deputy Sheriffs—fixing and changing compensation.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of June 13, 1931. In it you state:

When the present sheriff came into office in January, 1931, he appointed a new chief deputy sheriff but nothing was said to the commissioners court about his salary and he was paid for some two or three months the same rate as the former chief deputy was paid. About two months ago, the commissioners court decided that we had to cut expenses. It formed a resolution setting the salary of the chief deputy at $900.00 per year.

You request my opinion:

(1) Did the commissioners court have the legal right to do this?

(2) Has the commissioners court the legal right to increase or decrease the chief deputy's salary after same has been set?

Answering your first question will say yes.

Answering your second question will say you may increase or decrease the salary of the chief deputy sheriff at any time, but his salary must not be less than $900.00 per annum nor more than $1500.00 per annum, payable in monthly installments.

Sec. 10188, Code of Ala. 1923.

The chief deputy has no definite term of office protected by Section 281, Constitution.

Sec. 10188, Supra.

The employment of the chief deputy sheriff is not complete until the commissioners court has fixed his salary.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 23, 1931

Hon. Minus H. Johnson, Clerk,
Circuit Court, Walker County,
Jasper, Alabama.

Witness fees—Salaried jailers and deputy sheriffs entitled to same.

Sheriffs—Entitled to fees when service is performed by salaried deputies.

Bailiffs—Sheriff and salaried deputies not entitled to fee for acting as.

Clerks of the Circuit Court—Fees for issuing Grand Jury Subpoenas.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of June 18, 1931, also signed by Miss Lummie Swindle, County Treasurer of Walker County, in which you ask the following questions:

1. Are certain jailers and deputy sheriffs whose salaries are paid by the county entitled to witness fees?

2. Is the Sheriff who is on a fee basis entitled to fees for certain services performed by the general deputies appointed by the sheriff and paid salaries by the county (Local Acts, 1927, pp. 34, 338) viz; serving subpoenas, arrest fees, etc.?

3. Is the Sheriff who is on a fee basis or the deputies whose salaries are paid by the County entitled to per diem for said deputies' performing the duties of bailiff?

4. Is the Clerk of the Circuit Court entitled to fees for issuing subpoenas to witnesses to appear before the Grand Jury in cases where an indictment is returned?

I am of the opinion that your first inquiry should be answered in the affirmative. The Sheriff and his deputies when duly and properly summoned as witnesses in criminal cases are entitled to **per diem as a witness**, just as other witnesses.

Opinions Attorney General, Book 3, p. 127 (office edition);
Biennial Report Attorney General, 1928-30, p. 522;
Biennial Report Attorney General, 1920-22, p. 449.

I am of the opinion that this is also applicable to jailers, as being a witness is likewise not one of the regular duties required to be performed by a jailer.

In answer to your second inquiry, I am of the opinion that a sheriff who is on a fee basis is entitled to all legitimate fees as set out in Sections 3741 and 7287, Code of Alabama 1923, even though the services are actually performed by salaried deputies

In answer to your third inquiry, I am of the opinion that neither the sheriff nor his salaried deputies can receive compensation for serving as bailiff. A regular salaried deputy sheriff who is paid from public funds cannot draw compensation for acting as bailiff. Since no fee attaches for this service performed by the salaried deputy, the sheriff could receive nothing therefor. The sheriff is not allowed a fee for acting in the capacity of bailiff.

Opinions Attorney General, Bk. 3, p. 109 (office edition);
Biennial Report Attorney General, 1928-30, p. 282;
Biennial Report Attorney General, 1926-28, p. 474.

In answer to your fourth inquiry, I am of the opinion that the Clerk of the Circuit Court, upon application of the Grand Jury, is entitled to a fee for issuing subpoenas to witnesses to appear before the Grand Jury in cases where an indictment is returned. (Section 3739, Code of Alabama 1923). But the clerk cannot collect said fees where no true bill is returned.

Opinions Attorney General, 1928-30, p. 508.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 24, 1931

Hon. John Brandon,
State Auditor,
CAPITOL.

Tax Collector held without authority to sell improvements for taxes separate and apart from land on which situated there being no authority for separate assessment.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of April 18, 1931, in which you state:

"On June 5, 1930, the following property was bid in for the State by the Judge of Probate of Jefferson County:

"1 auto shed, 1 7-room boarding house, 1 6-room boarding house, 5 3-room dwelling houses, 6 4-room dwelling houses, 6 2-room dwelling houses.—Improvements only as listed above on the following described real estate: N½ of SW¼ and S½ of NW¼, Section 20, Township 17, Range 6; SE¼, Section 19, Township 17, Range 6.

"The above described property is situated in Jefferson County, and was bid in for the State for the sum of $232.77. Of this amount the State's part of the taxes was $68.15, and the Tax Collector of Jefferson County received credit for said State's part of taxes in his settlement with the State Auditor. I am advised that the taxes on the real estate above described were duly paid.

"Please advise the Auditor if in your opinion the above sale of improvements was a valid sale."

As I understand your inquiry is directed at the right of the tax assessing authorities to separately assess as real estate, land and improvements so that the improvements may be sold for taxes in the manner provided for the sale of real estate without selling the land to which it is attached. Such seems to have been attempted in the case you present.

While the law provides that land and improvements shall be separately listed for taxes by the taxpayer, no where do I find that there is a separate assessment except under the specific provisions allowing the separate assessment of timber rights or mineral rights, or where by contract the same are separately owned, in which case the improvements are not, and cannot be treated as other than personal property.

If the property is real estate, it is necessary to sell same as a part of the land. On the other hand, if the improvements are personal property, having been made so by agreement of the parties, the above sale is void, the sale not having been made in the manner required by law for sale of personal property for taxes.

I, therefore, conclude that the sale is invalid and as such offers no protection to the Tax Collector for taxes due on such property.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 24, 1931

Hon. J. W. Hamilton,
Tax Collector, Jefferson County,
Birmingham, Alabama.

Taxes assessed on property that has escaped taxation in any assessment within five years preceding the year when the assessment was made, together with a penalty of ten per cent of the taxes assessed thereon for each year, become due and payable when assessed.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Receipt of your letter of June 13th, 1931, is acknowledged. You write as follows:

"Please give me your opinion on the following:

"An escape assessment was made on June 10th, 1931, for the years 1926, 1927, 1928, 1929, and 1930, on real property. On what date should interest begin on such assessment."

When you speak of the years 1926, 1927, 1928, 1929, and 1930, I presume you mean the tax assessment years ending September 30th, of each of such calendar years.

There is, by Section 39 of Revenue Act, 1923, (Acts 1923, page 175), a penalty of ten per cent of the taxes assessed for each of the years of escape. Said Section 39 reads as follows:

> "Whenever the tax assessor shall discover that any property has escaped taxation in any assessment within five years next preceding the current year, he shall list, return and value said property for assessment for the years during which same has escaped taxation, and shall also endorse on such returns the year or years for which the property has escaped taxation, and the accrual of a penalty of ten per cent of the taxes assessed thereon for each year. The tax assessor shall give notice of such escape assessment, either in person or by registered mail, to the owner, or to the agent or attorney of such owner, who may appear before the tax assessor in person within twenty (20) days after such notice is given, if there be any objection to the assessment valuation as finally fixed for taxation by the assessor, the property owner may appeal from the assessment to the circuit court of the county in which the property is located at the next regular session of such court after the assessment is made final by the tax assessor, and such property owner shall give bond as provided herein for tax cases appealed to the circuit court."

The taxes for the years mentioned by you are upon property that has escaped taxation in each of the five years preceding the current assessment year. Said Section 39 requires the Tas Assessor when he discovers such a case, to list, return and value said property for assessment for each of the years during which the same has escaped taxation, and to endorse on such returns the years for which the property has escaped taxation, and the accrual of a penalty of ten per cent of the taxes assessed thereon for each year.

The addition of the penalty of ten per cent of taxes for each year is part of the Tax Assessor's work in making the assessment.

When property, that has escaped taxation in any assessment within five years preceding the current assessment year, is assessed as escape property, the taxes, including the ten per cent penalty for each year of escape, becomes payable as soon as such assessment is completed, as provided by said Section 39, and, if not paid then, bears interest from date of assessment.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 24, 1931

Hon. G. L. Haynes, Secretary,
Alabama Real Estate Commission,
CAPITOL.

"Regular employee" as used in Alabama Real Estate License Act, Acts 1927, page 336, defined. Salesman of company selling its own property held liable for real estate salesmen license as provided by said Act.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of January 27, 1931, in which you state:

"The Interstate Development Company, a partnership, located in Birmingham, Alabama, owns a tract of forty acres of land known as Meadwood Heights situated near the Municipal Air Port. The company has subdivided this acreage into residence lots and is selling them off to purchasers. The company employs four salesmen who assist in selling the property for the company.

"Because of methods employed in the sale of the property, which closely resemble the scheme commonly known as the 'free-lot-scheme', and which bear the ear-marks of deceptive practice, the company has been cited to appear before the Commission and show cause why its application for a broker's license for the year 1931 should not be denied. They will no doubt defend themselves with a plea that they own the property and are exempt from the operation of the law above captioned.

"We ask an opinion defining the status of 'regular employee' and how may this status be determined.

"What is meant by the language of the Act 'where such acts are performed in the regular course of, or an incident to, the management of such property and the investment therein'? Does this require the 'regular employee' to exercise some managerial direction over the property, or that the managership of the property be incidental to the regular employment?

"Should the Interstate Development Company prove they own the property they are selling and are therefore exempt from the operation of the Act, are not the salesmen of the Interstate Developmnt Company, who sell the property of another, required to have a license under this department and should not they be required to secure a broker's license, on the reasoning that they could not be licensed as salesmen, because salesmen must have a broker directing them and to whom the salesmen are responsible?

"Your opinion construing the intent of the language cited in the caption of this request will be appreciated."

Section 2 of the Alabama Real Estate License Act of 1927, which you quote, provides:

> "The provisions of this Act shall not apply to any person, copartnership, association, or corporation, who as owner or lessor shall perform any of the Acts aforesaid with reference to property owned or leased by them, or to the regular employees thereof, with respect to the property so owned or leased, where such acts are performed in the regular course of, or as an incident to, the management of such property and the investment therein."

The answer to your question necessarily involves an attempt to determine what constitutes a regular employee. In the last analysis the question is one of fact and is to be determined by all the facts and circumstances present in each individual case before you. However, I call your attention to the following definitions which have been made by the Courts in situations not dissimilar to yours:

> "An agent in the restricted and proper sense is a representative of his principal in business or contractual relations with third persons, while a 'servant' or 'employee' is one engaged, not in creating contractual obligations, but in rendering service, chiefly with reference to things, but some times with reference to persons when no contractual obligation is to result."
>
> State vs. Bond, 118 S. E. 276.
> 3 Words and Phrases, 3d Series, page 197.

> "Where the applicant had a contract for stipulated wages for service as a rental and insurance agent and a further contract with his employer for commission on renewals and new business, the employer being entitled under the contract to the entire time of the applicant and exercising control over his movements during business hours, he was an employee whether engaged in the regular work or under his commission contract, all the work being in the course of his employment."
>
> Cameron vs. Phillsburg, 173 Cal. 83
> Words and Phrases, Vol. 3, 3d. Series, page 197.

The word "employee" may have different meanings in different connections.

> 20 Corpus Juris, page 1242.

The context and connection in which it is used must largely determine whether in a particular case, the term includes a certain person.

20 Corpus Juris 1242-1243.

The word "regular" is defined by Webster's Unabridged Dictionary as "governed by rule or rules; steady or uniform in course, practice or occurence; not subject to unexplained or irrational variation; steadily pursued; orderly; methodical."

"A real estate broker or agent is one employed to negotiate the purchase or sale of real property; one who buys and sells lands and obtains loans, etc., on mortgages; one who negotiates sales of real property; a person who is, generally speaking, engaged in the business of procuring purchases or sales of lands for third persons on a commission contingent on success."

9 Corpus Juris, p. 510.

From the foregoing, it will be seen that there is rather a clear distinction between a real estate salesman and a regular employee. The definition just above given aptly defines a real estate broker or salesman. A regular employee is, however, not so easily capable of definition. With the definition above quoted, roughly I would say that in determining any particular case, the following facts should be considered:

1. Is the compensation on a stipulated basis per month or week or is it on a commission basis?

2. If on a commission basis, is payment contingent upon success?

3. Is the sale a mere incident to the employment?

4. Are sales whether paid for at a stipulated salary or on commission the prime object of the employment?

5. The amount of time consumed in duties other than that of selling.

6. The amount of time required or consumed for purpose of selling.

7. Whether the employer has the entire control of the employed's time.

Furthermore than the foregoing, I should think the length of time which the employed has served, the general course of his employment, what his other duties are, the kind and nature of the employer's business, and as said in the beginning, any and all facts which tend to throw light on the true nature of the relation. Further, is the employment such as to create contractual relations between the employer and third persons. This should be a guide in most cases because necessarily the sale or purchase of real estate creates contractual relation and if the usual course of the

employed's business is the creating of contractual relation between his employer and third persons, then he can not be considered a regular employee, "within the meaning of the statute."

With these principles in mind, it is my judgment that the Interstate Development Company is engaged in the real estate business. While of course a person may sell and own property, if the property is subdivided, advertised, handled, displayed, and in general disposed of as if belonging to third persons, it is my judgment that the owner so conducting himself would be liable for real estate license.

Regardless, however, of whether such person is a real estate broker, when salesmen are employed to sell such property whose primary and prime duties were the sale of such property, they constitute real estate salesmen within the meaning of the Act and are liable for license as such.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 25, 1931

Hon. G. H. Howard,
Judge of Probate, Elmore County,
Wetumpka, Alabama.

Probate Judge should revise poll tax list to be furnished inspectors at special elections to show only those qualified as of February 1st preceding such election.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of June 16, 1931, in which you state:

"The Legislature recently passed a law providing for a special election in Elmore County the second Tuesday in August. Please advise us whether we should use for the poll list only those qualified for the 1930 election, or whether we should revise this list to include those who have since paid all poll taxes due and are otherwise qualified, and excluding those who failed to pay poll tax since the 1930 election."

In reply, I beg to advise that Section 178 of the Constitution of the State of Alabama in part provides as follows:

"To entitle any person to vote at any election by the people, he shall have resided in the State * * * and shall have paid on or be-

fore the first day of February next preceding the date of the election at which he offers to vote all poll taxes due from him for the year nineteen hundred and one and for each subsequent year."

In commenting upon the foregoing provision in an opinion rendered October 19, 1929, (Biennial Report 1928, 1930, page 671) it was said:

"It is clear from the foregoing provision in the Constitution that when a person fails to pay all poll taxes due by him by February first of any year, he is thereby barred from voting at any election held prior to the 2nd day of February of the succeeding year."

Section 454 of the Code of 1923 provides that "on February 1st of each year the several Tax Collectors shall furnish the Judges of Probate an alphabetical list of all persons who have paid poll tax since February 1st of the preceding year, and such statement shall show for what year each poll tax was paid."

Section 455 provides that "each Judge of Probate shall deliver or cause to be delivered to an inspector at each voting place immediately preceding each regular election, an alphabetical list of all persons in such precincts who have paid **all** poll taxes due prior to February 1st preceding the election, and an alphabetical list of all registered voters in such precincts."

Section 535 provides:

"How conducted and certificates given.—Special elections are to be held and conducted, the returns thereof made, and certificates given, and, unless otherwise expressly provided, regulated in all respects by the provisions in relation to general elections."

From the foregoing it will be seen that no one is allowed to vote who has not paid all poll taxes up to February 1st. preceding the election, that the Probate Judge is required to deliver to the inspectors, the qualified list for each regular election and that special elections are to be conducted in the same manner as general elections.

It is, therefore, my opinion that you should furnish the inspectors at the poll, the poll list of those who are registered and otherwise qualified and who have paid all poll taxes due to February 1st. 1931.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 29, 1931

Hon. L. R. Dillon,
Tax Assessor,
Birmingham, Jefferson County, Alabama.

Where vacant lot assessed without improvements, improvements may be assessed as an escape.

Opinion by Assistant Attorney General Moore.

Dear Sir:

Your letter of June 15, 1931, requests my opinion on the following statement of facts:

"For the tax year of 1927, J. C. Jones assessed Lot 5, Block 10, North Smithfield at $200.00 as a vacant lot. After October 1st, 1927, J. C. Jones built a house on this lot and continued to assess it as a vacant lot for the tax years of 1928, 1929, and 1930. Assuming that the taxes have been paid for each of the years on the above mentioned property as assessed for those years. Should an escape assessment be made for the years the improvements have escaped taxation, and would the State be barred from collecting taxes on said improvements, by reason of the taxes having been paid, and a receipt having been issued for taxes on said lot."

Replying thereto I advise:

Section 53, Acts 1919, page 282, requires "every taxpayer to make full statement of all real and personal property with a correct description of **lands and improvements** separately."

Section 39, Acts 1923, page 153, requires the Tax Assessor to "list, return and value for assessment any property which has escaped taxation for previous five years."

Section 30, Acts 1923, page 152, says: "The lands and improvements must be listed separately."

In Beltona Coal and Mining Company vs. Hawkins, Tax Collector, 210 Ala. 359, where the taxpayer failed to list the improvements the Court held that the Tax Adjuster could so list and assess.

While this presumably was in the current year, the whole purpose and intent of the several provisions seem to be that lands and improvements shall be listed separately and the taxpayer failing to give in his property as required by law, can subject his improvements to an escape assessment where the Tax Assessor discovers that same has not been listed.

This is further supported by Section 25 of the Acts of 1927, page 166, relating to the taxation of the shares of domestic corporations and pro-

viding that the physical property which is assessed shall be deducted from the value of the shares and the residue shall constitute the value of the shares for taxation. This Section, however, has the following provision:

> "Provided, however, that if any property owned by a corporation, which property is subject to taxation in this State, is omitted from the tax return filed by the corporation, the same shall be assessed as an escape item or items of taxation in the same manner as escaped property of individuals is assessed and the value of such omitted property shall not be deducted from the value of the shares of stock of the corporation as assessed for taxation."

This provision was inserted to meet a previous decision of the Courts holding that while certain solvent credits had not been listed for taxation separately, they were included in the total value of the shares and the Legislature by the foregoing provision specifically provided that unless property was listed, it cannot be deducted from the value of the shares. This Section while of no direct bearing on the case before us, yet is persuasive, taken along with the other Sections, of the general intent of the Legislature that all property not listed for taxation as required by law may be assessed as an escape.

It is, therefore, my conclusion that the improvements which have not been listed for taxation should be added as an escape assessment made against the property for the years named in your letter.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 29, 1931

Hon. A. F. Harman,
State Superintendent of Education,
CAPITOL.

Principal of High School: Not within Section 281 of the Constitution of Alabama 1901.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of June 22, 1931 in which you request an opinion from this office on the following matter.

You state that W. J. Baird was elected by the County Board of Education of Jefferson County upon the recommendation of the Superintendent of Education of that county for a period of three years at a salary

of $300.00 per month for twelve months. You also state that subsequent to his election and after having served one year of the term for which he was elected, the County Board of Education has voted to reduce his salary to $2500.00 per year.

You ask whether or not such action of the said County Board is in contradiction of Section 281, Constitution of Alabama 1901.

I am of the opinion that the principal of the County High School does not hold a civil office of profit as that term is used in Section 281 of the Constitution of Alabama, 1901.

State vs. Sanders, 65 So. 378.
Stone vs. State, 89 So. 824.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 29, 1931

Hon. J. H. Saxon,
Tax Collector, Houston County,
Dothan, Alabama.

1. Where property has been assessed to a person, in any tax assessment year, who was not the owner of such property, and such taxes have not been paid, such property is an escape so far as the owner is concerned and after the current year of assessment is subject to assessment for each year of escape under the provisions of Section 39 of Revenue Act 1923 (Acts 1923, pages 175 and 176).

2. In such a case, a penalty amounting to ten per cent of the taxes assessed must be added for each year of escape.

3. In such an escape assessment against the owner, Section 3134 of the Code of Alabama, 1923, has no application.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Receipt of your letter of June 22, 1931, together with copy of something, I do not know what, is acknowledged.

You make the following statement of facts:

For the tax assessment years beginning October 1, 1926, certain real estate and certain personal property in the City of Dothan, Hous-

ton County, Alabama, was returned to the Tax Assessor of said County by Mr. R. D. Crawford for assessment, as his property, and was duly assessed to him. This assessment was not paid and there was an attempt by the Tax Collector in 1928, after the payment of said taxes became delinquent, to sell said real estate for the payment of the taxes assessed as the property of R. D. Crawford. Said assessment, nor the taxes of any subsequent year, have been paid on said property. It is now learned that said property has never been owned by Mr. R. D. Crawford, but was and still is the property of Mrs. Ammie F. Crawford, wife of Mr. R. D. Crawford, and has escaped taxation in each of the tax assessment years beginning October 1st, 1926, 1927, 1928, and 1929.

You ask to be advised how to proceed in this matter.

In reply will say that Section 39 of Revenue Act, 1923 (Acts 1923, pages 175, 176) provides for such a case. This Section reads as follows:

"Whenever the tax assessor shall discover that any property has escaped taxation in any assessment within five years next preceding the current year, he shall list, return and value said property for assessment for the years during which same has escaped taxation, and shall also endorse on such returns the year or years for which the property has escaped taxation, and the accrual of a penalty of ten per cent of the taxes assessed thereon for each year. The tax assessor shall give notice of such escape assessment, either in person or by registered mail, to the owner, or to the agent or attorney of such owner, who may appear before the tax assessor in person within twenty (20) days after such notice is given, if there be any objection to the assessment valuation as finally fixed for taxation by the assessor, the property owner may appeal from the assessment to the circuit court of the county in which the property is located at the next regular session of such court after the assessment is made final by the tax assessor, and such property owner shall give bond as provided herein for tax cases appealed to the circuit court."

From the provisions of the foregoing Section you will see that on the discovery of said escape, it became the duty of the Tax Assessor of the County to list, return and value said property for assessment for the years during which same has escaped taxation and to endorse on such return the years for which the property has escaped taxation and the accrual of a penalty of ten per cent of the taxes assessed thereon for each year.

I note that you say, in your letter: "The tax was not paid by Mr. Crawford and the property was sold for the taxes on July 9th, 1928. The record does not show a decree for the sale of this property and Mr. R. W. Manning set the sale aside and ordered an escape assessment made for the years of 1927, 1928, 1929 and 1930. It is a copy of this assessment that I am enclosing."

It seems that Mr. Manning, as agent of the Auditor, was attempting to act under the provisions of Section 3134 of the Code. In my opinion, Section 3134 has no application to the case under consideration. Section 3134 of the Code applies where property has been given in for assessment by or for the proper taxpayer, and at a sale of the property, so given in, it is bought in by the State, and the sale is "found to be erroneous, for want of regularity, proper or sufficient description, error in advertisement or for any other cause that may come within the knowledge" of the Auditor. These errors refer to errors made by some officer and the officer making the error is required to pay all costs of the erroneous proceeding. In such a case no penalty can be charged the taxpayer for an error made by an officer. In cases where the property was not given in for assessment by or for the owner of the property, and the assessment to the wrong person has never been paid, and assessment for the years of escape is to be made against the true owner, Section 3134 has no application in making such assessment. The copy of paper sent me does not constitute a proper assessment of the property in question and the Tax Assessor should now proceed to make an assessment as provided by Section 39 of Revenue Act, 1923 (Acts 1923, pages 175 and 176).

I am sending you a paper which shows how the Tax Assessor should list, return and value such property for assessment for the years of escape and endorse thereon the years of escape and the accrual of a penalty of ten per cent of the taxes assessed thereon for each year.

If the valuation of the property as stated on the paper sent is correct for the years of escape, then calculate the amount of taxes due each year, add ten per cent of the taxes due each year as penalty for the escape of such year, then add together all of the taxes and all the penalties and you will have the amount due by Mrs. Emmie F. Crawford, at the date of assessment.

If the sum of three hundred and five dollars has been paid thereon to the Tax Collector, then treat that as a credit on the amount due, when assessed.

You will notice from the provisions of said Section 39 that the Tax Assessor alone does the valuing in such a case; from which valuation an appeal may be taken to the Circuit Court of the County.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 30, 1931.

Hon. R. L. Shamblin,
Sheriff, Tuscaloosa County,
Tuscaloosa, Alabama.

Attention: Mr. F. M. Shamblin, Chief Clerk.

1. License Inspector authorized to appoint Deputy.

2. License Inspector entitled to same fees for arrests and taking bonds as are Sheriffs.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of June 22, 1931, in which you make the following inquiries:

"Is the State License Inspector allowed to appoint his assistants to help catch people who have no tags for their cars, and those who have failed to take out license to run business establishments?

"He has done this and they make arrests just like a bonded Deputy Sheriff. They approve their own bonds also. Are they entitled to the fees of arrest and bond? Or is the Sheriff supposed to get this? Is this legal?

In reply I beg to advise that Section 72, Acts 1927, page 193, provides in part as follows:

"License Inspectors are authorized to appoint deputies, and the acts of such deputies shall be recognized as his acts, and he shall be responsible for the same."

This is ample authority for the appointment of deputies by the License Inspectors.

In answer to your second question, in an opinion under date of March 2, 1931, to Hon. Roy Sanderson, Circuit Clerk, Marion County, (Book 3, page 5, office edition) the following was said with reference to the inquiry propounded by you:

"Answering your third question, I invite your attention to Section 72 Act approved July 22, 1927 (Acts 1927, p. 183, 185) the pertinent part of which is as follows:

" 'License inspectors shall have the same power **to arrest** persons violating the revenue laws of the State as is now vested in the sheriffs of the State, **and shall receive the same fees for such service.**'

"The fees of a sheriff for making arrests are set out in Section 3741, Code of Alabama, 1923.

"See also Opinions Attorney General 1928-1930, p. 33.

"This office has held that under the statute above quoted, when read in connection with Section 3363, Code of Alabama, 1923, the License Inspector arresting a person for violating the revenue laws may take and approve bond.

"Opinions Attorney General 1928-1930, p. 530.

"I am of the opinion, therefore, that since the giving of bail is mandatory under Section 3363 where there has been an arrest for a misdemeanor, and since the inspector is empowered to make such arrests and is entitled to the same fees as a sheriff for making arrests under the revenue laws, then the inspector taking and approving bond in such instances is entitled to the fee of a sheriff therefor."

It therefore appears that a License Inspector has the authority to make arrests and approve bond and is entitled, therefor, to the same fees as are paid the Sheriff.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 1, 1931

Hon. George Cameron,
Associate Commissioner,
Alabama Athletic Commission,
Chatom, Ala.

The staging of amateur boxing or wrestling bouts, matches, or exhibitions in this State, where admission fees are charged, without having first obtained a license or permit from the Alabama Athletic Commission so to do, violates the provisions of the Alabama Athletic Commission Act of 1927, as amended by Act of 1931.

The staging or holding in this State of a boxing or wrestling bout, match, or exhibition, where no admission fee is charged, and where a collection is taken from the spectators and used to pay the expenses of the match, bout or exhibition, and where those witnessing such bout, match, or exhibition, are under no obligation to pay an admission fee, and where the payment or nonpayment of such a fee is optional with the onlooker—such a bout, match or exhibition cannot be staged without first obtaining a license or permit.

The staging or holding of a boxing or wrestling bout, match, or exhibition by clubs operating on a membership plan, which plan requires payment of $1.00 per month by each member, the payment of the $1.00 per month entitling each member to admission to boxing or wrestling bouts, matches, or exhibitions staged or held by said club, during the month, without first obtaining a license, or permit from the Alabama Athletic Commission violates the provisions of the Alabama Athletic Commission Act of 1927, as amended by an Act of 1931.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I have your letter of April 29, 1931 as follows:

"Has the Alabama Athletic Commission the right to control amateur boxing and wrestling in Alabama, where a charge for admission is made?

"Does the Commission have the right to control any public boxing or wrestling match where no charge for admission is made but where a collection is taken up from the spectators to pay the expenses of the match?

"Two other clubs are operating on a membership plan. Membership in the club is $1.00 per month which entitles members to see the fights. No charge is made for admission at the door and only members of the club can be admitted.

"Has the Commission the right to control boxing or wrestling put on under the 'Club-Membership' plan?"

The clear and unambiguous provisions of the Alabama Athletic Commission Act of 1927, as amended by the Act of 1931, convinces me that only patriotic organizations chartered by authority of a Special Act of the Congress of the United States, or local unit thereof, may apply for the permit or license mentioned in said Act.

If a boxing bout is staged wherein only amateurs participate and where a charge is made for admission, and the bout or exhibition is held under the direction or auspices of a patriotic organization chartered by the authority of a special Act of the Congress of the United States, and under a permit or license granted by the Alabama Athletic Commission, such a bout, match or exhibition is held or staged as provided by law.

The permit, or license, is issued only to patriotic organizations and only those patriotic organizations chartered by authority of a special Act of the Congress of the United States or local unit thereof. Such an organization would not be authorized to stage an amateur bout, match or

exhibition, where an admission fee is charged, without first obtaining the required license or permit, from the Alabama Athletic Commission. No distinction is made in the Act between amateur boxers and wrestlers and professional boxers and wrestlers. Permits are issued only to patriotic organizations and only to such patriotic organizations as are chartered as indicated above.

> "Does the Commission have the right to control any public boxing or wrestling match when no charge for admission is made but where a collection is taken up from the spectators to pay the expenses of the match?"

The answer to this question involves a construction of certain parts of Sections 1, 3, and 9 of the Act. The pertinent part of each of these Sections is:

> "Section 1. That boxing, sparring and wrestling matches and exhibitions, for purses, where an **admission fee** is charged, are hereby allowed * * * *."

> "Section 3. The Commission shall adopt a seal and shall have and hereby is vested with the **sole direction, management, control and jurisdiction over all boxing, sparring and wrestling matches or exhibitions to be conducted,** held or given within the State of Alabama, and no such boxing, sparring or wrestling match or exhibition shall be conducted held or given within the state except in accordance with the provisions of this act * * * *."

> "Section 9. Any person who shall voluntarily engage in a pugilistic encounter between man and man, or wrestling match or exhibition, for money or any other thing of value, or upon the result of which any money **or other thing of value is bet** or wagered, or to see which an admission fee is charged, **either directly or indirectly,** or any person who shall be concerned directly or indirectly in the promotion of any boxing, wrestling or sparring match or exhibition, or any person who shall voluntarily box or wrestle, or voluntarily attempt to box or wrestle, for money or **any other thing of value,** or in a public place or in a place where an admission fee is charged, either directly or indirectly * * * *."

Section 1 considered alone, conveys the idea that the Commission shall have jurisdiction only over boxing, sparring and wrestling matches where an admission fee is charged; but Section 3, in very clear language, vests in the Commission **"sole direction, management, control and jurisdiction over all boxing, sparring and wrestling matches."** I am convinced that the staging of such a bout or exhibition, where a collection is taken in lieu of admission fees, without first securing the required permit from the Commission, violates the spirit if not the letter of Section 9, and especially the part of the Section referring to admission fees charged, **either directly or indirectly.** It will be noted that in Section 9 the following words ap-

pear twice: "* * * * * * or anything of value * * * * * * *." In my judgment money paid boxers or wrestlers to defray their expenses or some part of their expenses incurred in taking part in a boxing or wrestling match or exhibition constitutes a thing of value as contemplated in Section 9 of the Act. I am, therefore, of the opinion that a boxing or wrestling match, as described in your second question, and discussed in this paragraph, cannot be legally staged without first securing the permit or license provided in said Act.

Statutes must receive a reasonable construction, reference being had to their controlling purpose, to all their provisions, force and effect being given not narrowly to isolated and disjointed clauses, but to their plain spirit, broadly taking all their provisions together in a rational view. Neither grammatical construction nor the letter of the statute nor its rhetorical frame work shall be permitted to defeat its clear and definite purpose to be gathered from the whole act, comparing part with part. A statute must receive such reasonable construction as will, if possible, make all its parts harmonize with each other, and render them consistent with its scope and object. The intention of the whole Act will control the interpretation of the parts. To find out the intent is the object of all construction and interpretation.

The staging of boxing or wrestling matches, bouts or exhibitions under what is known as the club plan, without first obtaining a permit or license, violates the provisions of the Act in question. The club plan requires payment of a fee or dues, monthly, such monthly payment entitling each member to attend boxing or wrestling bouts, matches or exhibitions held during the month without further admission fees.

Section 9 of the Act in question provides:

> "Any person who shall voluntarily engage in a pugilistic encounter between man and man or wrestling match or exhibition, for money or any other thing of value, or upon the result of which any money or other thing of value is bet or wagered, or to see which an admission fee is charged, **either directly or indirectly** * * * *."

I am convinced that some part of the monthly fee or dues is nothing more nor less than an admission fee charged members for the privilege of witnessing the bouts. It will be noted that Section nine employs the words "directly or indirectly." In my judgment, the monthly fee is merely an admission fee collected indirectly.

36, Cyc., 1130;
31 C. J., 358;
Hand et al vs. Stapleton et al. 35 Ala,, 156;
Vol. 2, 2nd Edition, Lewis' Sutherland Statutory Const., Chapter 13, pp. 702-726 inc.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 3, 1931.

Hon. H. H. Stewart, Assistant Director,
State Board of Administration,
CAPITOL.

Costs—in cases where defendant is convicted, appeals, cause reversed and remanded, and defendant again convicted.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of May 22, 1931, in which you request an opinion in the following matter:

When a defendant is convicted, appeals to the Supreme Court and the case is reversed and remanded, and the defendant is again convicted in the lower court and sentenced to the penitentiary.

(1) Would all the costs accruing in the first conviction be payable out of the fine and forfeiture fund of the county under the provisions of Section 4039 of the Code as amended by an act approved February 18, 1927, (General Acts, 1929, page 45)?

(2) If not, what part of the fees of clerks, sheriffs, magistrates and witnesses accruing in the first conviction would be payable out of the fine and forfeiture fund of the county?

Answering your first inquiry, I am of the opinion that all the costs accruing in the first conviction shall not be paid out of the fine and forfeiture fund of the county. That part of Section 4039 as amended by Acts of 1927, page 45 pertinent to the instant question is as follows:

"This section shall be held to apply to all fees of officers of the trial court arising on an appeal by the defendant to the Supreme Court or the Court of Appeals, in cases where the judgment of the trial court is reversed and a new trial allowed or the defendant ordered discharged."

It is the opinion of the writer that this provision applies only to the cost of appeal and not to the costs of the first trial.

In answer to your second question it is my opinion that no fees of clerks, sheriffs, magistrates and witnesses accruing in the first conviction should be paid out of the fine and forfeiture fund.

Section 4039, Code of Alabama, 1923, providing for the payment of certain fees out of the fine and forfeiture fund applies only in cases where the defendant is not convicted except as provided by Acts 1927, page 45, which applies only to appellate courts.

Where a judgment of conviction is reversed and the cause is remanded, the defendant is not acquitted, but is still held on the same charge and in case he is again convicted and the judgment of conviction is final and he is sentenced to the penitentiary, the costs of both trials must be paid as provided for in Section 3067, Code of Alabama, 1923.

This opinion expressly overrules an opinion of this office heretofore rendered.

Opinions of Attorney General 1926-28, page 66.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 3, 1931

Hon. T. B. Smith,
Register, Circuit Court,
Livingston, Sumter County, Alabama.

Fee of Register for making transcript for Supreme Court provided for by Section 7283 of Code of 1923.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"Would like to have your ruling on, as to whether I am to be governed by Section 6102 of Code or Section 7283, in making up my cost bill for transcript to Supreme Court. I contend that I must go by Section 7283, page 595."

In reply thereto I advise that it is my opinion that the fee of the register for preparing transcript for the Supreme Court is to be paid under the provisions of Section 7283 of Code of 1923, rather than as provided for in Section 6102 of Code of 1923.

Section 6102 applies to both civil and criminal cases while Section 7283 applies only to civil cases. The specific provision for civil cases, will in my judgment, apply in civil cases rather than a section applying both to civil and criminal cases.

Moreover, Section 6102 was enacted in 1919 and first appeared in the Code of 1923. The provisions of Section 7283 fixing the fee for registers for preparing the transcript for the Supreme Court was not in the Code of 1907, but appears in the Code of 1923. It appears that this was inserted

by the Code Committee, and hence is in effect an enactment subsequent to the Act of 1919, which appears as Section 6102. As the apparent later expression of the Legislature, Section 7283 applies rather than Section 6102, and you, as register, are entitled to fifteen cents per hundred words rather than ten cents per hundred words, for preparing the transcript for the Supreme Court.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 6, 1931

Hon. John D. Petree,
Judge of Probate,
Russellville, Franklin County, Ala.

Court of County Commissioners has no authority to pay for ice for drinking water used in county offices.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of June 19th in which you state:

"Please advise me if the Court of County Revenue of this County would be authorized or permitted to pay from County funds for ice for drinking water at the county courthouse."

If I understand your letter, you mean supplying ice for drinking water for the various county offices.

I am of the opinion that the inquiry should be answered in the negative. I find no statute or construction giving the Court of County Commissioners such authority.

Public funds cannot be expended unless there is express authority or authority necessarily implied.

Biennial Report 1928-1930, p. 826,
Biennial Report 1928-1930, p. 981.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General,

July 6, 1931

Hon. Watkins M. Vaughan,
Judge of Probate,
Selma, Dallas County, Ala.

Veteran selling tires at filling station of Standard Oil Company entitled to Veteran's license under Hubbard Bill, if otherwise qualified.

Opinion by Assistant Attorney Moore.

Dear Sir:

I have your letter of June 26th in which you state:

"A World War Veteran, who has a job with the Standard Oil Company, at one of its City filling stations, makes application for a Veteran's License to sell tires and automobile accessories at that filling station. The Standard Oil Company will sell him the tires and accessories and he in turn will sell them to the public. The force about the filling station will assist when needed.

"Is it your idea that in such case the Veteran should be issued a free license?"

In reply thereto I advise that it is my opinion that if this Veteran can qualify in other respects and the business is his and he is not either directly or indirectly an agent of the Standard Oil Company he is entitled to the Veteran's license. Of course the Probate Judge must satisfy himself as to disability, proof of same, and that the proposed business will be carried on mainly through the personal efforts of the applicant, **and it is his means of livelihood.**

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General,

July 6, 1931

Hon A. G. Teague,
Cleark of the Circuit Court,
Ashville, St. Clair County, Ala.

Fee of court reporter taxed as part of costs.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of June 13, 1931, in which you request my opinion as follows:

"Kindly advise whether a court reporter's fee is charged as provided in section 6739 of the Code of Alabama, 1923, after having been amended by an Act of the 1927 Legislature, General Acts of Alabama, page 599."

I call your attention to the fact that the Act approved September 2, 1927, (General Acts 1927, p. 599) which amends Section 6739, Code of Alabama, 1923, does not change the wording of the original section except as to the amount of salary the court reporter shall receive. Section 6739, supra, fixes the salary at $1800.00 per annum, and the Acts, supra amending the section, fixes it at $2400.00 per annum, and the section as amended, remains the same as to all other matters. Therefore, the amendment does not in anywise affect Section 6738, Code of Alabama, 1923, which taxes as a part of the costs in all cases the reporter's fee against the unsuccessful party. This section is as follows:

"6738. Fee of five dollars a day taxed as costs in each case.—In all cases reported by an official court reporter or special reporter, there shall be taxed as part of the costs of the case a fee of five dollars for each day or fraction thereof that such reporter shall be engaged in reporting a case, to be collected as costs as in other cases, and, when collected, paid by the clerk of the court into the county treasury of the county in which the case is tried."

It is my opinion the reporter's fee of $5.00 per day or fraction thereof, is chargeable as a part of the costs and should be paid into the county treasury.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General,

July 6, 1931

Hon. J. D. Snodgrass, Mayor,
Scottsboro, Ala.

Municipalities or towns are without power or authority to charge a license or tax upon a motor carrier hauling passengers or any motor truck hauling passengers or any motor truck hauling freight for hire when such motor carriers in the usual course of operations enter or pass through such municipality or town.

In the exercise of its police power or for the purpose of raising revenue, one or both, the town of Scottsboro, Alabama, may impose a license upon a ticket office conducted by a bus company, which bus company operates upon the streets of the town of Scottsboro and transports passengers between Scottsboro, Ala., and Chattanooga, Tenn.

In the exercise of its police power or for the purpose of raising revenue one or both, the town of Scottsboro, Alabama may enforce payment of the license mentioned hereinabove, either by the enforcement of the lien provided by statute or by criminal prosecution of the agent of the corporation violating said ordinance.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I beg to acknowledge receipt of your letter of May 19th as follows:

"There is a bus company operating upon a regular schedule between Chattanooga and Huntsville, which maintains an office in Scottsboro. The office of the company is located in a local drug store where tickets are sold to passengers desiring to travel upon the busses. Passengers are solicited upon the streets of Scottsboro and regular hours for arrival and departure are published.

"Upon the above statement of facts, kindly advise us as follows:

"1. Can the City of Scottsboro lawfully impose a license or privilege tax upon such bus company for the operation of said motor vehicles upon the streets of Scottsboro?

"2. Can the City of Scottsboro lawfully impose a license or privilege tax upon the ticket office of said bus company?

"3. Can the City of Scottsboro enjoin the corporation of said busses until they comply with the ordinance requiring the payment of privilege tax before engaging in business in said City of Scottsboro?"

In answer to your inquiry, I beg to refer you to Sub-Section B, of Section 77, of the Alabama Highway Code, found at page 377 of the General Acts of Alabama, of 1927. This section provides:

"Local authorities shall have no power or authority to charge a license or tax upon any motor carrier hauling passengers or any motor truck hauling freight for hire, when such motor carriers in the usual course of operations enter or pass through any county, municipality or town of this State. Provided this sub-section shall not restrict the right of any municipality to charge a license for the privilege of maintaining or operating a terminal station, depot or waiting room therein."

In this section is found the answers to questions one and two of your letter. Under this section, by ordinance of the town, properly prepared and adopted, your town may charge a license for the privilege of maintaining or operatig the ticket office in question. This section deprives the town of the authority to impose a license or tax upon the bus company

for the operation of said vehicles upon the streets of Scottsboro. Before the passage of this Act, municipalities had such authority.

In answer to your third question, I beg to refer you to Section 2172, of the Civil Code of Alabama, of 1923. This section provides:

> "2172. Liens for license or privilege tax.—On all property, both real and personal, used in any exhibition, trade, business, vocation, occupation, or profession, for which a license is or may be required, municipal corporations shall have a lien for such license, which lien shall attach as of the date the license is due and shall be superior to all other liens, except the lien of the state, county and municipal corporations for taxes, and the lien of the state and county for license. Such lien may be enforced by attachment or in equity."

The lien provided by the section just quoted may be enforced by attachment. The ordinance may also be enforced by criminal prosecution of the agent of such organization violating such ordinance.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General,

July 9, 1931

Hon. J. M. Money,
Judge of Probate,
Scottsboro, Jackson County, Ala.

Members of Commissioners Court—when and when not entitled to mileage.

Highway Foreman not entitled to pay for the use of his own truck.

Member of Commissioners Court—Unlawful to hire truck to foreman for road construction.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I have your letter of June 23, 1930, in which you ask my opinion as to the following matters:

> (1) Are the members of the commissioners court entitled to mileage for any other time during the year besides the four regular meetings prescribed by law, to-wit: February, May, August and November, and the tax terms that they meet for? In other words the Commissioners meet on the second Monday in February, and adjourn

to meet back in two weeks, and meet every two weeks throughout the year. Are they entitled to mileage from their respective homes to Scottsboro for each one of these meetings?

(2) Can a foreman, who has charge of a bunch of men and trucks, on repairing and building roads, lawfully use one of their own trucks, in making up their pay roll, and presenting it to the commissioners court, pay themselves for such truck hire.

(3) Can a member of the court of county commissioners lawfully own a truck and hire it to said foreman, and the foreman pay him out of the county funds each pay day.

It is my opinion the answer to your first question must be in the negative. The law of costs and fees are, in their nature, penal, and must be strictly construed.

Dent & McGruder v. State, 42 Ala. 514.
Lee, Sills et al. v. Smiley, 16 Ala. 773.

Section 6771, Code of Alabama, 1923, fixes the compensation for commissioners attending terms of their court, also the pay for mileage going to and from such courts, and it is my opinion where a statute says: "* * * in going and returning from their respective courts * * *" means the regular terms fixed by statute and no others.

Biennial Report of Attorney General, 1928-1930, p. 785.

My answer to your second question is in the negative. To permit this would be clothing the road supervisor or foreman with unlimited power. If he could use his own truck **without authority,** he could go outside and employ any number of trucks at the expense of the county, and thus be enabled to make his pay roll as large as he should see fit. There is no authority of law for such charge.

Biennial Report of Attorney General, 1928-1930, p. 591.

My answer to your third inquiry is in the negative. Section 5024, Code of Alabama, 1923, prohibits a commissioner from being either directly or indirectly interested in any work done, or contract entered into for or by the county, and it seems to me where a member of the commissioners court hires his truck to a road foreman to be used in the construction or maintenance of the public roads of the county, he does so in the very teeth of Section 5024, Code of Alabama, 1923, which is as follows:

"5024. County officer interested in county contracts, or hire of county convicts.—Any judge of probate, tax collector, tax assessor, sheriff, clerk of the circuit court, solicitor, or county treasurer, members of the court of county commissioners or board of revenue, or any other state or county officer who takes any contract for work or services of the county, or is employed in any way under such con-

tract, or is interested in any contract for hire of county convicts, or sells any goods or supplies to the county, or is in any wise pecuniarily interested in any such contract or sale, as principal or agent, must, on conviction, be fined not less than fifty nor more than one thousand dollars, and may be imprisoned in the county jail, or sentenced to hard labor for the county for not exceeding twelve months; but nothing in this section shall apply to the sale or purchase of drugs or medicine for the use of prisoners or paupers."

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General,

July 9, 1931

Hon. Walter K. Smith,
Chief Examiner of Accounts,
CAPITOL.

Prisoners—
(1) Feeding Convicts prior to removal by Board of Administration—how paid.

(2) Authority of Board of Administration to remove convict from jail when State works County's convicts—when such removal authorized.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of May 18, 1931. You request my opinion:

"1. Does not the general appropriation for feeding prisoners cover the feeding by the Sheriff of a convict sentenced to **hard labor** where, under agreement with Court of County Commissioners or like County governing body, all County convicts are turned over to the State Board of Administration, **until the Sheriff has actually delivered the County convict to the State Board of Administration or its agents?** In other words is there any provision of law for the payment for feeding a prisoner convicted, sentenced to the **penitentiary or hard labor and confined**, on order of the court, in the County jail until removal to the penitentiary or to where such convict under direction of the President of the Board of Administration shall be taken for confinement or hard labor, from the date of his sentence to the date of his removal by the State Board of Administration, **other than from the fund created by specific appropriation for the feeding of prisoners?**

"2. **After** the conviction of a prisoner **and his sentence** to the penitentiary or to hard labor, where the County of conviction has agree-

ment with the State Board of Administration for the taking over the control of all County convicts, **has the President of the Board of Administration any authority** to remove such convict, or direct his removal, **until** he has first received **notice** in **writing** from the Clerk of the court of conviction where such prisoner is confined and **has had forwarded to him** a copy of the **judgment entry and sentence** in the case **together** wtih information as to any **necessary special care to guard** such prisoner, and is there any authority for the Sheriff to deliver such convict except upon the written order of the President of the Board of Administration?"

After a consideration of Sections 3609, 3610, 3612, 3613, 3675, 4801, 4802, 4807, 4826, 4827, 4828, 5063, and 5064, also Act approved Feb. 18, 1927 (General Acts 1927, pp. 52-55), also Section 1 and Sub-section 17, of Section 17, Act approved Sept. 7, 1927 (General Acts 1927, p. 681), also Section 3, Act approved Sept. 6, 1927 (General Acts 1927, p. 693), my answer to your first question is that the general appropriation mentioned is the only provision of law on the subject.

I have considered in this regard, Section 4801, Code of Alabama 1923, also the provisions of law that the county jail is used as a prison for the safe keeping and confinement of convicts sentenced to imprisonment in the penitentiary **until their removal thereto** (Sec. 4802), also Section 4827 of the Code requiring the Sheriff to **feed the prisoners in the jail** under his jurisdiction, and Section 4807 requiring the sheriff to **furnish support** to those prisoners **committed to the jail,** who do not provide for themselves; also Section 1 of the Act approved Feb. 18, 1927, supra, the Act, supra, providing that **all laws of the State regarding State convicts shall apply** to county convicts, also Section 8 of Act approved Feb. 18, 1927, supra, providing that **all** and **several** the statutes and laws now in force or hereafter enacted, regulating and controlling the State Convict Department, etc., shall apply in force and effect as to **County** convicts **kept** and **used** by the **State;** also all other Sections of the Code and provisions of law by Acts hereinbefore cited.

Answering your second question will say there is no other authority except as you mention. This is covered by Section 3609. Notice the word "thereupon" in said Section.

The opinion of June 29, 1927, (Opinions Attorney General 1926-1928, p. 211) is accordingly modified to the foregoing extent.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General,

July 9, 1931

State Tax Commission,
CAPITOL.

Attention: Mr. S. C. Crockett.

Table as described is not device within the meaning of Schedule 54, Revenue Compilation of 1929, (Schedule 40, Acts 1919, page 282, Section 361).

Opinion by Assistant Attorney General Moore.

Gentlemen:

I have your letter of June 27, 1931, in which you state:

"With further reference to opinions by you on the subject of certain tables on which a game known as miniature pool is played, February 12, 1931, to Probate Judge W. L. Pratt, Bibb County, March 12, 1931, to Probate Judge D. W. Crosland, Montgomery County, dated June 16, 1931, to Probate Judge J. G. Cuninghame, Clarke County, and to Schedules 20, 54, 129 and 143, Revenue Laws of Alabama, 1929, Schedule 54 provides in part as follows:

" 'Devices—FOR EACH DEVICE USED BY PERSONS AS A SOURCE OF PROFIT TO THEMSELVES, such as throwing at wooden figures, or any object of like character * * * * or for operating a cane rack, a knife rack, OR SIMILAR RACK OR TABLE, twenty-five dollars, to be paid in each county in which it is operated * * * *'

"In view of the foregoing and the difficulty which we have frequently encountered in determining licenses in certain instances, your opinion is requested as to whether or not the operation of the so described table could not be said to constitute liability under Schedule 54.

" 'Table is about 3½ feet wide by 6 feet long with four pockets, one in each corner and on which a game similar to pool or bottle pool is played with the use of regular billiard or pool cues, and three golf balls. The table is something like a pool table but has no rubber or elastic cushions being made entirely of wood with molding rails or sides, which the balls strike, covered with heavy duck.'

"If it is held by you that the foregoing table would not be liable under Schedule 54, please advise insofar as possible just what limit is to be placed on 'devices' under this Schedule, what is to be included other than the items specified and what the words, 'or any object of like character' or 'similar rack or table' could be said to include."

In reply thereto I beg to advise that the table which you describe is not such a device as to be liable for license under Schedule 54 of the 1929

Compilation. I see no similarity between the devices named in said Schedule quoted by you and the table which you describe.

If you will note in the Schedule it refers to objects of "like character" and "similar rack or table." "Like" is defined by Webster's Unabridged Dictionary as "closely resembling its original", that which is equal or similar to another; the counterpart; an exact resemblance; a copy; an equal." "Similar" is defined as "nearly corresponding; resembling in many respects; having a general likeness; that which resembles something else as in quality, form, etc." With these definitions in mind, it would appear that for a device to be liable for license under this Schedule it must so resemble one of the devices described as to be almost a counterpart thereof. "Table" as used in the Schedule evidently refers to tables where there is some sort of rack duplicating the ordinary cane rack or knife rack. I do not think the table which you describe is such a table.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General,

July 9, 1931

Hon. J. M. Money,
Judge of Probate,
Scottsboro, Jackson County, Ala.

Officers—Justice of peace cannot be deputy sheriff at same time. Secs. 42, 43, Constitution.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of recent date requesting my opinion.

Can a justice of the peace in one precinct execute papers and act as a deputy sheriff in another precinct of the same county?

My answer is in the negative.

A justice of the peace is a judicial officer who belongs to the judicial branch of government.

A deputy sheriff is an executive officer whose authority extends throughout the county and who belongs to the executive branch of government. A **chief** deputy sheriff holds a civil office of **profit** under this State and so does a justice of the peace. Section 280 Constitution does not prohibit a justice of peace being **chief** deputy sheriff at the same time, but the Code does prohibit it.

See Section 2575, Code of Alabama, 1923,
Opinions Attorney General 1926-28, pp. 461, 462.

A commission deputy other than the Chief Deputy Sheriff, while a public officer, holds no office of **profit** under the State in that his compensation is not payable from **public** funds, but he is paid personally by the sheriff.

Hence Section 2575, Code, has no application to justice of peace holding at same time position of a commission deputy sheriff, but Sections 42 and 43, Constitution do have application, and hence, the Justice of the Peace being a judicial officer and a deputy sheriff being an executive officer, and the main functions of each belonging to separate branches of government, they cannot be exercised by one and the same person as in this case. Such would be contrary to the spirit of our organic law.

If one holding the office of Justice of Peace accepts and qualifies in the office of deputy sheriff he thereby vacates the former.

Opinions Attorney General 1922-24, p. 324.
Opinions Attorney General, 1924, Vol. 2 (off. ed.) pp. 715, 723.
Scott vs. Strobach, 49 Ala. 477.
Shepard vs. Sartain, 185 Ala. 439.
Mann vs. Darden, 171 Ala. 142.
Word vs. State, ex rel Goldsmith, 203 Ala. 306.
Opinions Attorney General, 1926 (off ed) p. 322.
Opinions Attorney General, 1926-28, p. 105 et seq.
Mecham on Public Officers, pars. 427, 429, 54, 13.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General,

July 10, 1931

Hon. J. H. Saxon,
Tax Collector, Houston County,
Dothan, Alabama.

1. Property that has escaped assessment during any assessment year, when assessed by the Tax Assessor as provided by Section 39 of Revenue Act, 1923, the taxes, with the ten per cent penalty added, become payable at once; and, if not paid at once, the sum total of taxes and penalty bears interest at the rate of eight per cent per annum.

2. Where the owner of property, subject to taxation, has failed, in any assessment year, to return such property for assessment by the first Monday in February of such year, after notice to make re-

turn, and such property is assessed by the Tax Assessor as provided by Section 37 of Revenue Act, 1923, such taxes with penalty of ten per cent of such taxes as penalty for delinquency in making return added becomes due and payable October 1st following assessment and becomes delinquent in payment January 1st following and, if not paid before said January 1st, the sum total of taxes and penalty added bears interest at the rate of eight per cent.

3. By Section 3056 of the Code taxes bear interest only when payment of such taxes have become delinquent. Taxes assessed on escapes, as provided by Section 39 of Revenue Act, 1923, becomes delinquent if not paid at once after assessment.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Receipt of your letter of July 3rd is acknowledged. Referring to the opinion given you of date June 29th, 1931, you state:

"The point that is not clear to me now is, when does interest become chargeable. Does it begin on the date of this escape assessment, or does it begin on the date that each year's tax became delinquent?"

In reply will say that one must keep in mind the distinction between delinquency in returning property for assessment and delinquency in payment of taxes. For delinquency in returning property for assessment a penalty of ten per cent of the taxes assessed for each year of such delinquency is added. Taxes are not due and payable until assessed, and no interest accrues until property has been assessed and the time, if any, allowed for payment of such taxes has elapsed.

One should also note the distinction between delinquency in returning property for assessment during the tax assessment year, provided for by Section 37, Revenue Act, 1923 and what is called escaped taxes in Section 39 of the 1923 Revenue Act. For instance, take the case we were considering, referred to by you. The property in question was escape property for each of the tax assessment years beginning October 1st, 1926, 1927, 1928 and 1929. Said property for such years should now be assessed by the Tax Assessor as an escape for each of such years; such tax assessment years having each ended. On assessing such escaped property, a penalty of ten per cent of the taxes for each year of escape must be added to such taxes. When so assessed, such taxes become due and payable at once; and, if not paid when assessed, such taxes with penalty added, become delinquent in payment and bear interest from the date of assessment, at the rate of eight per cent per annum.

If such property was not returned for assessment in the current tax assessment year (which began October 1st, 1930, and which will end Sep-

tember 30th, 1931) prior to the first Monday in February, 1931, after demand had been made for such return, as provided by law, such return for assessment became delinquent, and it became the duty of the Tax Assessor, thereupon to assess such property as provided by Section 37 of the Revenue Act, 1923. In making such assessment, it was the duty of the Tax Assessor to note upon the returns made by him "the failure of the owner, after notice, to make such return and the accrual of a penalty of ten per cent of the taxes to be assessed thereon."

When such an assessment has been made and penalty added during the current assessment year, such tax and penalty does not become due and payable until October 1st, 1931, and does not become delinquent in payment until January 1st, 1932. Such taxes with the penalty of ten per cent for delinquency in returning for assessment, bear interest at the rate of eight per cent per annum after becoming delinquent in payment.

I have written thus fully, in the hope of making clear the different instances of delinquency in payment and delinquency in assessment, and when interest begins to run after assessment.

The statute providing for the payment of interest on taxes is Section 3056 of the Code, 1923, and reads as follows:

> "Interest on taxes after becoming delinquent.—All taxes becoming delinquent, bear interest at the rate of eight per cent per annum; and such interest must be added to and collected as part of the taxes, and reported in such manner as the state auditor may prescribe."

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General,

July 10, 1931

Hon. M. T. Maxwell, Clerk,
County Board of Revenue,
Tuscaloosa, Tuscaloosa County, Ala.

Non-support—Counties must pay court clerk for use of dependent wife or children of convict during confinement regardless of his net earnings.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of June 13, 1931. In it you state you have been presented with a bill from Mrs. Ruby Thompson, wife of Henry Thompson who was convicted and sentenced for non-support December, 1929, from the Inferior Court of Tuscaloosa County. This man worked for the coun-

ty up until the convicts were turned over to the State about May 15, 1930. The bill is in amount of $180.00, being $15.00 per month from May 15, 1930 to May 15, 1931. The county of Tuscaloosa has not received anything from the State on this account.

You request my opinion.

Is this a proper charge against the county and should we pay the same?

I presume from your communication that the party was convicted of violation of Section 4480, Code of Ala. 1923, and sentenced to be confined at hard labor for the county. This being so, then the provisions of Sections 4481 and 4482, Code of Ala. 1923, should be followed. The main object and purpose of Chapter 157, Code of Ala. 1923, of which the foregoing sections are a part, is that where a husband or parent is guilty of non-support of his wife or children, thru the courts he may be convicted of the offense, and sentenced to pay a fine or serve time, in either of which events it becomes the duty of the county to hold the fine for the benefit of the defendants, or in case he is sentenced to hard labor, to pay out of the general fund of the county the sum of fifty cents per day for each day he is so confined at hard labor this sum to be paid to the court clerk for the use of said dependents. In other words, the object is to afford a **sure means** of at least a partial **support** by the husband or parent of his wife and children, by fining him or making him work for the county for his offense.

You will observe that under Section 4492 it is provided:

> "There shall be no costs of any kind whatsoever taxed in cases arising under this chapter."

But provision is there made that,

> "The sheriff of said county shall serve all writs, processes and papers, directed by the court or judge thereof, to be served by him, **and a suitable allowance shall be made to him by the county commissioners or board of revenue, of such county, for his actual disbursements in effecting such service.**"

It is clear that if the sheriff performs these services his compensation therefor is **payable from the** general funds of the county and not from earnings of the **convict, nor by way of costs taxed against the defendant.** This is further evidence of the purpose and intention of the aforesaid chapter of the Code.

Now, a careful reading of Section 4481, Code, supra, shows that **regardless of whether the convict earns anything or not the county must pay from its general funds** to clerk of the court for the use of the dependent or dependents, the sum of fifty cents per day **for each day** the defendent is

confined. Nothing is said in that section about such sum being paid **from the defendant's earnings.**

The county did not have to turn its convicts over to the State, and because it did so, it cannot escape the performance of its duty under Section 4481.

Whatever "net earnings" may be paid to the county by the State Board of Administration under Section 6, of the Act approved February 18, 1927, (General Acts 1927, pp. 52, 54) as the "net earnings" of one serving time on conviction of non-support under Section 4480, Code, must be put into the fine and forfeiture fund of the county. There can be no deductions by the clerk for **costs and fees,** as no one convicted of a violation of Section 4480 is compelled to work for "costs." (Sec. 4491). The payments to the clerk for the use of the wife or children under Section 4481 are not made from "net earnings" of that convict paid to the county by the State, and are not contingent on the receipt of any such "net earnings" from his lalor, but are chargeable and payable in any and all events at the specified rate in the stated manner from the "**general fund** of said county."

The opinion of February 11, 1929, to the Board of Revenue, Shelby County (Opinions Attorney General, 1928-30, p. 183) being in conflict with this opinion is hereby overruled and should not be followed.

The opinion of June 28, 1927 to the Director, Child Welfare Department, Montgomery (last paragraph thereof, Opinions Attorney General, 1926-28, p. 210) is modified to conform to this opinion and in its original form should not be followed.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General,

July 10, 1931

Hon. Geo. W. Burk, Jr.,
Sheriff, Talladega County,
Talladega, Alabama.

Fees—Sheriff—Summoning jury in capital cases—The difference between amount paid under Section 3667 and amount fixed by Section 3741, not paid from fine and forfeiture fund in capital case.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of May 22, 1931. You request my opinion:

1. When the State pays me $3.00 under Section 3667, for summoning jury in capital case, should I collect the balance of the $5.00 fixed under Section 3741, out of the fine and forfeiture of the county under Section 4039, as amended by the Act approved February 18, 1927 (General Acts 1927, pp. 45, 46)?

2. In capital cases where the sheriff summons a certain number of special jurors and the regular jurors are also "served to serve" on that capital case, does the sheriff get $5.00 for summoning the special jurors and $5.00 for summoning the jury in capital cases?

Answering your first question will state that where one is tried, convicted and sentenced to death, that part of the $5.00 fee of the sheriff for summoning the jury in such capital case not paid under Section 3667, by the State, cannot be paid out of the fine and forfeiture fund. The defendant is legally dead from time of sentence and no execution can issue against him. Since no executive can issue against him for the costs remaining unpaid, then such unpaid part of the costs cannot be paid out of the fine and forfeiture fund.

It is probable, however, that after defendant is electrocuted, if such be the case, an administrator of his estate could be appointed and you might proceed as by civil process.

Opinion Attorney General, May 20, 1931, to Circuit Clerk, Sumter County.

When there is a sentence to death, later commuted, Section 3617 governs.

See Opinion Attorney General, 1928-1930, p. 777.

Answering your second question will state Section 3741 allows a fee of only five dollars "for summoning jury in capital case, or at any special court for the trial of criminal to be paid out of the county treasury." This does not allow you to charge but five dollars and that is for the special jury summoned.

Opinion Attorney General, 1918-1920, p. 196.

Sections 8644, et seq., Code of Alabama, 1923 show what your duties are in relation to such matters. It is for the special venire summoned under Section 8644 that the allowance is made.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General,

July 11, 1931

Hon. J. J. Tolbert,
Tax Collector,
Fort Payne, DeKalb County, Ala.

Publication as provided by Section 244, Acts 1919, page 282, is necessary when owner is a non-resident of the County.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of June 26, 1931, in which you state:

"In regard to the matter discussed with you while in your office Wednesday. Please give your opinion, if I may sell property that owners were residents of this County when assessments were made. For example: John Jones lived in this County when he assessed his property, but in delivering the delinquent notice, I found he had moved from the County and left no address.

"As I understand the law this property is not considered non-resident, and should be sold with the regular residents tax sale July 11th."

In reply thereto I beg to advise that Section 244, Acts 1919, page 282, being Section 253 of the Revenue Compilation of 1929, provides:

"Notice by publication or posting; when given.—If the person against whom such assessment is made is a non-resident of the county, and has no agent therein known to the tax collector, or if he has died since making the return and there is no executor or administrator of his estate residing in the county, such notice may be given by publishing the same in a newspaper published in the county, or if no newspaper is published therein, by posting the same at the courthouse of the county for three weeks."

As I interpret this, non-resident means not at the time of assessment, but at the time such notice must be served and if the person against whom the assessment has been made is a non-resident at the time notice should be served, then advertisement as provided in this Section is necssary.

I am afraid that this ruling is somewhat contrary to the tenor of the informal conversation you had with the Attorney General in his office recently. However, this is the reason that I must insist that the requests for opinions be in writing, that I may have ample time to carefully consider the questions before ruling upon the same.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General,

July 13, 1931

State Tax Commission,
CAPITOL.

Attention: Mr. John S. Mooring:

Corporations who qualify to do business in Alabama are required to make franchise tax returns whether such return discloses liability for tax or not.

Opinion by Assistant Attorney General Moore.

Gentlemen:

I have your letter of June 25, 1931, in which you state:

"This Commission, in the administration of the franchise tax, has always held that every foreign corporation qualified to do business in Alabama, as provided by law, should submit a franchise tax return, to the end that the Commission could determine the amount of capital employed in Alabama. There are a number of foreign corporations that have declined to submit franchise tax returns, stating that they qualified in Alabama and paid the corporation permit fee as a protective measure, but that they had no capital employed in this State and were not doing business in this State.

"As we understand this matter, the determination of capital employed is a judicial one and the law does not authorize any corporation to determine whether or not it has capital employed. It is the business of this Commission to make this determination in the initial instance and, of course, the Commission cannot make this determination without the information disclosed by the franchise tax return.

"A number of these corporations, such as casualty and life insurance companies, do business in this State insofar as the issuance of policies to citizens of Alabama may be considered doing business. Some of these corporations probably do engage in active business. In the case of casualty and life insurance companies, it is possible that balances due by agents on policies is capital employed. Our contention is that the franchise tax return should be made by foreign corporations whether business is transacted in this State or not, because, as stated, the State Tax Commission could not determine whether capital was or was not employed without the information given in the franchise tax return.

"We would like to have your opinion whether or not the Commission is right in its position that it can require a franchise tax return by every foreign corporation qualified to do business in this State. In connection with this matter, you will note certain specific authority given to this Commission in Section 64, Acts 1927, page 180.

In reply thereto I beg to advise that in my opinion a corporation which has qualified to do business in Alabama is required to make a franchise tax return regardless of whether such return discloses liability for tax or not. I have come to this conclusion for the following reasons:

Section 232 of the Constitution of 1901, provides:

> "No foreign corporation shall do any business in this State without having at least one known place of business and an authorized agent or agents therein, and without filing with the Secretary of State a certified copy of its articles of incorporation or association * * * * the Legislature shall by general law provide for the payment to the State of Alabama of a franchise tax by **such** corporation."

It will be seen that the Constitution provided first for qualification and then for the payment of a franchise tax by "such corporation." "Such corporation" being the corporation which had qualified.

Section 54, Acts of 1927, page 176, provides:

> "That every corporation organized under the laws of any other state, nation or territory and doing business in this State * * * shall pay an annual franchise tax."

Section 58 of said Act provides that:

> "The president or any executive officer or the secretary of every foreign corporation subject to the franchise tax under this Act shall make a written statement, under oath, to the State Tax Commission showing the following facts."

These two Sections are to be taken, in my judgment, along with Section 232 of the Constitution which clearly provides for the payment of a tax by the corporations which have qualified to do business. Apparently it was in the mind of the Constitution-makers as well as of the Legislature that so far as the payment of franchise tax was concerned the liability therefor was created by qualification. In other words, when a corporation chooses to qualify, it admits that it is "doing business in Alabama" within the meaning of the franchise tax Sections of the Constitution and Statutes. This conclusion is emphasized by Section 69 of said Acts of 1927, page 182, which provides that:

> "Each foreign corporation immediately after qualifying to do business in Alabama shall make and file with the State Tax Commission the statement required by this Act."

There are no exceptions or possible exceptions to the requirement that new corporations make the return. There can, therefore, be no reason that corporations which have qualified during some previous year should fail to make the return. Moreover the law at present, requires an annual per-

mit to be secured, and this causes the corporation to make what is in substance an annual qualification to do business and on this reasoning, Section 69 supra would apply.

I base my conclusion, however, chiefly on the following:

In the case of State vs. Crane Company, 18 Ala. App. 194, 89 So. 901, the Court held that the ascertainment of the amount of franchise tax due was a judicial act and one devolving at the time of this decision upon the Probate Judge, but now (by the change of the statute, upon the Tax Commission). Therefore, no one but the Tax Commission, or upon appeal, the Courts, is authorized to determine whether liability for franchise tax exists or not, and therefore the making of a return by the Corporation and a judicial determination thereon by the Tax Commission is necessary.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General,

July 16, 1931

Hon. S. R. Butler,
Chairman, State Tax Commission,
CAPITOL.

Oils such as three-in-one and machine oils usually used as household commodities, not subject to the excise tax provided by Sections 26 and 27 of the Revenue Act, approved July 22, 1927.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of July 2, 1931, in which you state:

"The gasoline Department of the State Tax Commission has been asked for a ruling on whether or not packaged, trade marked, lubricating oils such as three-in-one and machine oils used as a house-hold commodity is subject to the excise tax as defined in Section 26 of the Revenue Act approved July 22, 1927.

"There appears to be no ruling from your Department on this case, therefore I respectfully ask that you give us your opinion as to whether this tax applies to these house-hold commodities as above described."

In reply thereto, I beg to advise that Section 26, Acts of 1927, page 139, being Schedule 101, page 276, of the 1929 Revenue Compilation, defines lubricating oils as those "commonly used in lubricating or oiling **engines, bearings, journals, axels, hubs** and other parts of machinery." From this definition it is my opinion that such oils as three-in-one and sewing

machine oil and products similar thereto, put up in small bottles or cans and usually used as house-hold commodities are not such "lubricating oils" as to come within the definition of the statute and be liable for the tax of two cents per gallon as required by Section 27 of said Act. It is my judgment that lubricating oils as defined in the Act applies to the oils commonly used in the heavier types of machinery. Oils such as three-in-one are seldom, if ever, used for oiling engines, axles, and machinery of that nature, and hence are not within the meaning of the Statute, in my opinion.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General,

July 16, 1931

Hon. S. R. Butler,
State Tax Commissioner,
CAPITOL.

Act No. 53, approved June 19th, 1931, repeals subsection (b) of Section 3 of Act No. 342, approved August 25th, 1927.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of July 3rd came duly to hand. You ask my opinion as follows:

Does House Bill 53, approved June 19th, 1931, repeal Subsection (b) of Section 3 of Act No. 342, approved August 25th, 1927?

In reply will say that in Section 5 of said House Bill No. 53, there is the following provision:

"The mileage tax herein provided for shall be in lieu of the three per cent gross income on all intrastate business transacted in this State, levied in subsection (b) of Section 3 of the Act approved August 25, 1927, which subsection (b) of said Act approved August 25th, 1927, is hereby repealed."

From the foregoing it is clear that it was the legislative intent to repeal said subsection (b) of Section 3 of Act No. 342, approved August 25th, 1927. The only question remaining is: Is such pronouncement of repeal in the body of the Act constitutional? Is such repeal clearly expressed in the title of the Act, as required by Section 45 of the Constitution?

The title of the Act reads as follows:

"Defining motor transportation companies and 'motor transportation operators', conferring jurisdiction upon the Alabama Public Service Commission over the transportation of passengers and property for hire as common carrier by motor vehicles and providing for the supervision and regulation and taxation of such motor transportation companies and for the enforcement of this Act and for punishment for violation thereof."

It is my opinion that said House Bill No. 53 contains but one subject, within the meaning of Section 45 of the Constitution of the State of Alabama, and that the regulation and taxation of motor transportation companies may include the repeal of said subsection (b) imposing a gross income tax on such companies, as such companies are defined in said Act, and substitute in its stead another mode of taxation. There is, in my opinion, nothing prohibiting such an enactment.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General,

July 22, 1931

Alabama Public Service Commission,
CAPITOL.

Form of bond to be made by a motor transportation company its surety and filed with the Alabama Public Service Commission as provided by Section 7 of Act No. 273, approved June 19th, 1931.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Receipt of your letter of June 30 is acknowledged. You ask for proper form of bond to be made under the provisions of Section 7 of Act No. 2373, approved June 19th, 1931.

In compliance with your request, I am furnishing you the following form, which, in my opinion, is in compliance with the provisions of said Section 7. This form is as follows:

State of Alabama,)
..... County.)

Know all men by these presents, that we ....., a corporation, a motor transportation company, and ....., a corporation, as surety, a Surety Company qualified to do business

in this State as such surety, are held and firmly bound unto the State of Alabama in the amount of .....dollars, for the payment of which well and truly to be made and done, we bind ourselves, our successors and assigns, firmly by these presents.

Sealed with our seals, and dated this ..... day of ..... 193.....

The condition of the above obligation is such that if the above bound ....., a motor transportation company, shall pay any and all mileage taxes and penalties assessed under the provisions of Act No. 2373, approved June 19th, 1931, and shall faithfully comply with all lawful decisions, orders, rules, regulations, demands and requirements of the Alabama Public Service Commission made, rendered, issued or promulgated under the provisions of said Act, then the above obligation to be void; otherwise to remain in full force and effect.

This bond is made and entered into in compliance with the provisions of Section 7 of Act No. 2373 of the Legislature of Alabama, approved June 19, 1931.

.....

By
Its President.

.....

By.....
Its

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General,

July 22, 1931

Hon. G. H. Howard,
Judge of Probate,
Wetumpka, Alabama.

An attorney, who has been engaged in the practice of the law in another state or country for a period of two years or more, must, before engaging in the practice of law in this state pay a license tax as provided by Section 7 of Act No. 163, approved July 22, 1927.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Receipt of your letter of July 10th, 1931 is acknowledged.
You ask if an attorney at law, who has practiced his profession for

more than two years in another state must pay license when he begins practice of the law in this State.

In reply will say that, in my opinion, it makes no difference where an attorney at law has practiced his profession, after having engaged in the practice for two years, he must before he can engage in the practice in this State, take out a license as provided by Section 7 of Act No. 163, approved July 22nd, 1927 (Acts 1927, pages 153-154). Said Section 7 reads as follows:

> "Attorneys.—Each attorney engaged in the practice of law shall pay an annual license of Fifteen Dollars ($15.00) to the State, but no license shall be paid to the county. If such business is conducted as a firm, or as a corporation in which more than one lawyer is engaged each lawyer so engaged shall pay a license; provided, that the license imposed by this section shall not apply until such attorney shall have practiced his or her profession as long as two (2) years. The license tax herein imposed is in addition to the license fee required under Section 11 of an Act approved August 9, 1923 (General Acts 1923, page 105), to provide for organization, regulation and government of State Bar, etc."

It will be seen on reading said Section that there is no qualification as to where an Attorney shall have practiced law.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General,

July 24, 1931

Hon. T. A. Simpson,
Berry, Alabama.

Court of County Commissioners—Employment of relatives.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of July 17th, 1931 in which you request an opinion of this office on the following matter.

You ask whether or not it is legal for you, being a member of the Court of County Commissioners of Fayette County, to employ relatives to work for the county?

Section 5076, Code of Alabama, 1923, is as follows:

"5076. Any member of any commissioners court or board of revenue who shall award any contract in which the county or such commissioner or member of board of revenue is interested to any person related, either by blood or marriage within the fourth degree to such commissioner or member of board of revenue, or who shall employ any such relative to do any work for said county, or to act as agent for any such member in any work in which such county is interested, shall be guilty of a misdemeanor and, on conviction, shall be fined not less than ten dollars nor more than one hundred dollars."

This section has been construed by this office to preclude the court of County Commissioners as a court from employing the relative of any member of the court, even though such member absented himself from the meeting.

However, the Supreme Court in the recent case of Garrison, Probate Judge, vs. Hubert Summers, 134 So. 675, held that a member of the court could not contract with relatives for services to be rendered the county, but that the court could do so, such member not voting.

I am herewith enclosing a copy of the recent opinion of the Supreme Court.

This opinion overrules opinions recently rendered by this office.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 24, 1931

Hon. Walter K. Smith,
Chief Examiner of Accounts,
Department of Examiners of Accounts,
CAPITOL.

In cases where the sentence to death has been commuted to life imprisonment the costs of officers and witnesses may be paid out of the Fine and Forfeiture Fund of the County.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of July 11, 1931, in which you request my opinion as follows:

"Where the Governor has commuted a sentence to death to life imprisonment in the penitentiary he may direct the costs of the con-

viction in the case to be paid as in cases where the sentence is imprisonment in the penitentiary. (Section 3617, Code of Alabama, 1923).

"If he does not see fit to direct such payment to be made would not the witness fees and officers', clerks' and sheriffs' fees be proper claims against the Fine and Forfeiture Fund of the County?"

It is my opinion that such costs may be charged to and payable out of the Fine and Forfeiture Fund of the County under Section 4039, Code of Alabama, as amended by an Act of the Legislature approved February 18, 1927 (General Acts 1927, p. 45). This section has to do with the Fine and Forfeiture Funds of the various counties, and provides among other things:

"* * * * or in which defendants have been convicted, and have been proven insolvent by the return of execution 'no property found.'"

Section 3741, Code of Alabama, 1923, where it refers to removal of prisoners says in part:

"* * * * If such prisoner is convicted the clerk of the court in which conviction is had shall tax the costs of such removal against him, **and shall immediately upon the adjournment of the court, issue execution therefor, and for the other costs.**"

It is clear that it is the duty of the clerk to immediately on the adjournment of court, to issue execution against the defendant for not only specific costs here referred to, but for all other costs, and when the execution is returned "no property found," then it would be referred to that portion of Section 4039, Code of Alabama, quoted above, and such costs would be chargeable and payable out of the Fine and Forfeiture Fund of the county.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 25, 1931

Hon. J. W. Hamilton,
Tax Collector, Jefferson County,
Birmingham, Alabama.

1. A person, firm or corporation to whom taxes on property has been assessed has no legal right to pay taxes on part of such property and leave taxes on part unpaid; and the Tax Collector has no legal right to accept the payment of taxes, by the one to whom assessed, on part of the assessed property and release such part from the lien for all the taxes so assessed.

2. A Tax Collector may, if he sees fit, at any time receive a partial payment on taxes and credit the taxpayer with the amount paid; but cannot release the lien on any of the property assessed by reason of such partial payment. In such a case the lien on all the property is retained until all of such taxes shall have been paid and, if not paid, in due time, such property, or a sufficient amount thereof must be sold as provided by law for the payment of balance due with costs and charges.

Opinion by Assistant Attorney General Evans.

Dear Sir:

In your letter of April 29, 1931, you state as follows:

I have before me a request from the defunct bank of Ensley, a State bank and of the City National Bank of Bessemer, a Federal bank, each, to allow it to pay the taxes assessed on property still owned by each of said banks and to leave unpaid the taxes assessed on certain properties that have been disposed of by each of them.

You ask if said banks have a right to make such payments.

In reply will say that the duty of collecting the tax assessed against each said bank is upon you as Tax Collector. It is your duty to collect all such taxes; and you have no right or authority to leave any taxes unpaid, if it is possible to collect it. If, in order to collect, you must make levy on property of the Bank, you should levy first on personal property and sell the same as provided by law, and if enough personal property cannot be found you should proceed against sufficient amount of the real estate assessed to the bank, in the manner prescribed by law, in such case, and sell sufficient amount thereof to pay all taxes and costs. If there is no personal property upon which to levy, or not a sufficient amount for the payment of the taxes assessed against him and the costs, when sold, then the Tax Collector must proceed against the real estate in the manner prescribed by law. If a sale of part of the real estate when sold to a purchaser other than the State, is sufficient to pay all taxes and costs, the choice of what real estate shall be sold is with the Tax Collector.

If no purchaser other than the State can be found, then in my opinion, nothing less than all the real property on which there is a lien for the payment of the taxes should be sold.

In my opinion, a person to whom property has been assessed, has no right, in law, to pay the taxes on part of the property so assessed and leave part. If the Tax Collector will permit it, at any time, such person may make partial payment on all the taxes so assessed; but in such a case the lien for payment of taxes is retained on all the assessed property

until all the taxes and costs shall have been paid; and any or all of such property may be sold for the payment of the balance due.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 25, 1931

State Tax Commission,
CAPITOL.
Attention: Mr. J. R. Gamble.

The Act approved July 2, 1931 providing for certain exemptions from license to Disabled Veterans does not relieve applicants from payment of Probate Judge's fee for the issuance of such license.

Opinion by Assistant Attorney General Moore.

Gentlemen:

I have your letter of July 16, 1931, in which you state:

"Under an Act approved March 9, 1931, exempting Disabled War Veterans from the payment of certain licenses it was specifically provided in Section 2 that:

" 'It shall be the duty of each and every license collecting authority of this State or municipality thereof to issue without charge, to such persons as may be entitled to license hereunder a license to engage * * * *'

"Section 6 of an Act approved July 2, 1931, repealing the Act of March 9, 1931 provides that:

" 'It shall be the duty of each and every official empowered or charged by law with the duty of issuing licenses in this State to issue a license to every such person as may come within the provisions of this Act * * *' But it does not say without charge.

"As we are having so many inquiries with reference to the Probate Judge's fee for issuing licenses under this Act, your opinion is requested on this question."

You ask my opinion on the following:

"Are the Probate Judges entitled to the regular issuance fee of fifty cents, under Section 6 of Disabled Veterans Exemption Act, approved July 2, 1931?"

In reply I beg to advise that apparently the Act fails to provide for the issuance of the license without the payment of the fee of the Probate Judge. Section 363, Acts 1919 page 282, provides that upon the issuance of the license the licensee shall pay the amount due and a fee of fifty cents to the Probate Judge for the issuance of such license."

There being nothing in the new law relieving the veteran who secures the license free from the payment of the Probate Judge's fee, it therefore follows that before the applicant can secure the license under the Act approved July 2, 1931, it will be necessary to pay the Probate Judge's fee of fifty cents for the issuance of the license.

In my judgment the fact that the Act approved March 9, 1931 provided that such fees should not be paid, which Act was repealed by the present Act, emphasized the above conclusion.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 6, 1931

State Tax Commission,
CAPITOL.

Act No. 340 being House Bill 833 Kelly, exempting Disabled Veterans of the World War and the Spanish American War, and Confederate Veterans from business or occupational license does not apply to motor vehicles.

Opinion by Assistant Attorney General Moore.

Gentlemen:

I have your letter of July 10th in which you state:

"Under the Act approved March 9, 1931, exempting Disabled War Veterans from the payment of certain licenses it was also specifically provided that such free license should also include the right to operate a motor vehicle with the appropriate private tag thereon of not exceeding five passenger capacity, as a taxicab. Under the Act approved July 2, 1931, the Act of March 9, 1931, was repealed and since there is no special mention of including the right to operate a taxicab in the new Act your opinion is requested as below. A copy of the Act of July 2nd is attached; from which you will note that Section 1 reads in part as follows:

"'Section 1. That every * * * * officer or enlisted man * * * * physically disabled * * * * shall * * * * BE EXEMPT FROM BUSINESS OR OCCUPATIONAL TAXES * * * *'

"Further, it will be noted that Sections 2, 3, and 4, in reference to the licenses each say 'business or occupational for which a license tax is prescribed by law.'

"Further, Section 5 ends with * * * *

" 'The term "license tax," as used in this Act, shall be termed to include any tax prescribed by a license tax schedule, but not to exclude any license tax otherwise provided.'

"Section 3, page 332, Acts 1927, provides in part as follows:

" 'Motor Vehicles.—(a) For each automobile, motor car, or motor bus, used for transporting passengers, paying fare or charges except a jitney bus, shall pay the following named amounts for license tax: * * *'

"Further, Section 362, page 282, Acts 1919, provides in part as follows:

" 'License tax levied for counties.—There is also hereby levied for the use of each county in the State a license or privilege tax * * * * of fifty per cent of the State license or privilege tax, except as herein otherwise provided.'

"Further, Section 23, page 284, Acts 1923, provides in part as follows:

" 'Disposition of proceeds.—The money collected as motor vehicle license taxes * * * * shall be distributed as follows: Eighty per cent (80%) to the State and twenty per cent (20%) to the incorporated city or * * * * twenty per cent (20%) to the county. The money collected as motor vehicle license taxes by the State * * * *'

"Now in view of all of the foregoing, your opinion is requested as follows:

"(a) Has a veteran in every way qualified the right to be issued under the Act of July 2, 1931, a license tag to operate a motor vehicle for hire as provided for under Section 3, page 332, Acts 1927, applying thereto in payment for such tag the twenty-five dollar exemption provided for each the State, County and Municipality?

'(b) Would a veteran engaging in the business of hauling for hire be entitled to be issued a truck tag under Section 16, page 224, Acts 1923, applying in payment therefor the twenty-five dollar exemption provided each for the State, county and municipality?

"(c) Would a veteran whose business or occupation is that of a traveling man, merchant, doctor or person otherwise engaging in some

business or occupation, using his private automobile in connection with or as an incident to the carrying on of such business or occupation, be entitled to have issued to him a license tag for such private car under Section 12, page 284, Acts 1923, and applying in payment thereof the twenty-five dollar exemption allowed for each the State, county, and municipality?

"(d) In the event that your reply to either of the foregoing inquiries is in the affirmative, just what amount would be required to be paid in each instance by the veteran, by which is meant, say where the price of a taxi tag is $37.50, would eighty per cent (80%) of such amount ($30.00) be the amount of the State license, to which would be applied the twenty-five dollar exemption allowed for the State, leaving a balance of $5.00 to be paid by the veteran for the State license, and would the remaining twenty per cent (20%) of the license be for the county or municipality, to which could be applied the twenty-five dollar exemption provided in each instance?

"(e) In the event that you reply to paragraph (d) in the negative how are the amounts chargeable for motor vehicle tags to be determined in computing the twenty-five dollar exemption provided?"

In reply thereto I beg to advise that in answer to your various questions my opinion is as follows:

It is my opinion that the exemption provided for in Act No. 340, h. 833, Kelly, approved July 2, 1931, to exempt Disabled Veterans of the World War, Spanish American War, and Confederate Veterans from certain business and occupational licenses, does not apply to motor vehicles used either for private purpose or for hire. The license, in my opinion, in both cases is on the use of the device on the public roads and not on the person operating it. While Section 3, Acts 1927, page 332, to which you refer says "Every automobile, etc., used for transporting passengers," might indicate that the transportation of passengers was the privilege charged for, yet a careful reading of the entire law relating to automobiles will indicate that the use of the public roads is the privilege for which the license is required, and this is determined and guaranteed in various ways, by horsepower, by manner of use, and by weight. Therefore, it is my judgment that the increased use brought about by the transportation of passengers for hire does not change the prime purpose for which the license is required, to-wit, the use of the public roads.

The Act provides that Disabled Veterans shall be exempt from **business** or **occupational** license. In section 5 it is provided that "the term 'license tax' as used in this Act shall be deemed to include any tax prescribed by the license tax Schedule, but not to exclude any license tax otherwise provided." The exact meaning of this Section is not absolutely clear, but applying the rule of strict construction which must be applied in exemption statutes, it is necessary to construe this in conjunction with the remainder of the statute which exempts the veteran only from business or occupa-

tional licenses. Therefore, as in the case of motor vehicles, where the license is on the device, or its use, the exemption cannot apply.

I, therefore hold that there is no exemption from the license required for motor vehicles used for hire. I think the failure to specifically mention motor vehicles used for hire as was done in the Hubbard Act approved March 9th and which is repealed by the present Act, indicates strongly that the Legislature intended that no exemption should be given for automobiles, either private or used for hire.

The foregoing renders unnecessary an answer to the remainder of your questions.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 6, 1931

Hon. S. R. Butler,
State Tax Commissioner,
CAPITOL.

By Section 2 of House Bill No. 111 approved July 7, 1931, known as the "Chain Store Act," the payment of a filing fee of fifty cents and the license fee as prescribed by Section 5 of said Act must be paid in the case of each store operated or maintained.

Opinion by Assistant Attorney General Evans.

Dear Sir:

I have your letter of July 29, 1931 in which you state as follows:

"Re: Filing Fee under Section 2, House Bill 111 by McNeel, approved July 7, 1931.

"Section 2 of the above named Act is as follows:

" 'Section 2. Any person, firm, corporation, association or copartnership desiring to operate, maintain, open or establish a store in this State shall apply to the State Tax Commission for a license so to do. The application for a license shall be made on a form which shall be prescribed and furnished by the State Tax Commission, and shall set forth the name of the owner, manager, trustee, lessee, receiver, or other person desiring such license; the name of such store; the location, including the street number, of such store; and such other facts as the State Tax Commission may require. If the applicant desires to operate, maintain, open or establish more than one such store;

he shall make a separate application for a license to operate, maintain, open or establish each such store, but the respective stores for which the applicant desires to secure licenses may all be listed on one application blank. Each such application shall be accompanied by a filing fee of fifty cents, and by the license fee as prescribed in Section 5 of this Act.'

"Please advise whether the filing fee of 50 cents as set out in the above Section is required for each store for which a license is issued when more than one store is listed on the same application blank."

In reply will say that the last two sentences of Section 2 of said Act read as follows:

"If the applicant desires to operate, maintain, open or establish more than one such store, he shall make a separate application for a license to operate, maintain, open or establish each such store; but the respective stores for which the applicant desires to secure licenses may all be listed on one application blank. Each such application shall be accompanied by a filing fee of fifty cents, and by a license fee as prescribed by Section 5 of this Act."

It is clear from the foregoing that an application must be made for each store accompanied by a filing fee of fifty cents and by the license fee for operating or maintaining such store as prescribed in Section 5 of said Act.

It is true that several separate applications may be listed on one application blank; but, the fact that several separate applications are listed on one application blank, does not make all the separate applications into one application for filing fee or license. There must be a separate application for each store, whether several such stores are listed on the same blank or each one is listed on a different blank; and a filing tax and license fee must be paid in the case of each store.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 6, 1931

Hon. G. P. Butler,
Judge of Probate, Lee County,
Opelika, Alabama.

Persons selling merchandise from truck to retail dealers for resale held not to be liable for peddler's license.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of July 25, 1931 in which you state:

"I respectfully request your advice upon the following facts.

"A man in Lee County obtains a supply of hosiery which he stores in his warehouse; he has a truck and he loads this truck with hosiery and travels over the county from merchant to merchant making sales from his truck. He sells only to retail merchants, and these merchants make their selections from the goods carried on the truck.

"I find no license applicable unless it be a peddler's license. Will you please advise me whether on the facts stated this man would be required to pay a peddler's license."

In reply thereto I advise that, in my opinion, this party is not liable for a peddler's license. In an opinion rendered June 28, 1928, (See Biennial Report 1926-1928, page 626) it was said:

"I advise you that this office has always drawn the distinction between persons selling merchandise to retail dealers for purposes of resale, and those who retail merchandise or other commodities from place to place. There is no ruling of this office which requires persons, firms or corporations who sell merchandise to retail dealers to take out a peddler's license."

In the case of Randolph vs. Yellowstone Kit, 83 Ala. 471, Chief Justice Stone defined the term "peddler" as follows:

"The term 'peddler' has many definitions, more or less full. It is the noun of the verb to peddle, the definition of which is 'to go about and sell; to retail by carrying around from customer to customer; to hawk; to retail in very small quantities;' Webster's Dictionary; Worchester's Dictionary; Bouvier's Law Dictionary; Imperial Dictionary; Rapelje & Lawrence Law Dictionary. These several definitions vary somewhat in phraseology, but they are not very materially different in meaning. Its popular signification is, a small retail dealer who, carrying his merchandise with him, travels from house to house, or from place to place, either on foot, on horseback, or in a vehicle drawn by one or more animals, exposing his goods for sale, and selling them; and in the absence of something in the statute to control us, we must interpret the language employed by the Legislature in its proper sense."

From the foregoing it appears that a peddler is one who goes about from place to place selling to the consumer and where a person sells to the retailer, he does not come within the popular definition of "peddler," which Chief Justice Stone in the opinion above quoted, made the judicial rule of construction.

It is therefore my opinion under the facts stated by you the party is not liable for a peddler's license.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 6, 1931

Hon. Charles E. Bragg,
Clerk Circuit Court, Lawrence County,
Moulton, Alabama.

Solicitor's fees:

1.—Reckless driving of an automobile on highways.

2.—Driving automobile while intoxicated.

3.—Operating an automobile without a tag.

4.—Operating a business without proper license.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of May 30, 1931 in which you request my opinion as follows, which is the Solicitor's fee in the following matters:

1. Reckless driving of an automobile on highways.

2. Driving automobile while intoxicated.

3. Operating an automobile without a tag.

4. Operating a business without proper license.

Answering your first and second inquiries, the solicitor's fee is $10.00. I find no statute fixing solicitor's fee for these violations, and this being true, they come under Section 3738, Code of Alabama 1923, p. 196 where it provides as follows:

"For each conviction of misdemeanor, not otherwise provided for, $10.00."

Answering your third and fourth inquiries, the violations there designated are against the revenue laws of the state and the solicitor's fee in each case is $30.00 and is provided for under Section 3738, supra, p. 196, where it is provided as follows:

"For each conviction of a revenue law, not otherwise provided for, $30.00."

Biennial Report Attorney General 1928-30 p. 728.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 7, 1931

Hon. W. B. Reeder,
Tax Collector, Lauderdale County,
Florence, Alabama.

Senate Bill 196, being Act No. 157, approved April 4, 1931, having been held unconstitutional persons redeeming property from tax sales would do so under provisions of law existing prior to the passage of said Senate Bill No. 196.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of July 24, 1931, in which you state:

"A question has arisen in regard to the tax sale in this county, as to whether the old law of redemption will apply to the buyer and him get his fifteen per cent interest on his redemption and possession within six months, or the Walker law which only allows eight per cent and two years for possession.

"Kindly advise at once which law will apply to the sale of land for 1930 taxes."

In reply thereto I beg to advise that the so-called Walker Bill to which you refer is, I assume, Senate Bill 196 being Act 157 by Senator Walker. In an opinion rendered by this office under date of May 8, 1931, this Act was held unconstitutional.

Therefore in reply to your inquiry, parties redeeming lands from tax sales will do so under the provisions of the law existing prior to the passage of the so-called Walker Bill.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 7, 1931

Hon. Hugh White, President,
Alabama Public Service Commission,
Montgomery, Alabama.

Alabama Motor Carrier Act of 1931 provides mileage tax for each mile traveled over any public road, street or alley dedicated to public use, and/or maintained by the expenditure of public funds, whether within or outside any incorporated city, town or village.

Alabama Motor Carrier Act of 1931 provides for the collection of mileage tax where vehicle travels over and on the bridges and approaches of Mobile Bay Bridge Company.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I beg to acknowledge receipt of your letter of July 8th as follows:

"Under section 5 of the Alabama Motor Carrier Act of 1931, approved June 19, 1931, effective thirty days after its approval by the Governor, each motor transportation company doing business in the State subject to the jurisdiction of the Alabama Public Service Commission, is required to 'pay to the State as contribution to the maintenance, repair and policing of its public highways for each mile actually operated within the State over **such** public highways' such a mileage tax as is particularly set forth in said section 5.

"The question is presented to the Public Service Commission whether this mileage tax for example: in the case of A. B. Company carrying passengers, doing business in this State and subject to the control and jurisdiction of the Commission, operating from its bus terminal at a point within the City of Birmingham, where its passengers are taken on the bus, to its bus station at a point within the City of Montgomery, where it discharges such passengers, is required to pay to the State such mileage tax for the miles of the cities' streets and highways between the bus station to the corporate limits of the City, and the miles of streets traversed within other incorporated cities and towns on its route between Birmingham and Montgomery?

"In other words, we desire your official opinion as promptly as possible, on the question as to whether such companies under this Act are required to pay such mileage tax for the miles of streets traversed within the corporate limits of any incorporated city or town.

"The Commission further desires your official opinion upon the following question: The Cochrane Bridge is owned and operated by the Mobile Bay Bridge Company, which is a private corporation under the laws of Alabama. Such Bridge Company is a public utility, itself,

under the provisions of Section 9742 of the Code of Alabama of 1923, being a toll bridge.

"There are several motor transportation companies, as defined under said Alabama Motor Carrier Act of 1931 operating over said Cochrane Bridge into and out of the City of Mobile.

"Please advise the Commission if the miles of bridge and bridge approaches operating as a part of said toll bridge are to be taken as a part of the mileage on which tax is required to be paid by said companies to the State of Alabama under Section 5 of the Alabama Motor Carrier Act of 1931.

"The above Act becomes effective on to-wit July 19th, 1931, and you can appreciate the necessity of our having an opinion on these questions just as promptly as possible."

In answer to the question propounded in the second paragraph of your letter, I am of the opinion that, under the provisions of the Act, the A. B. Company would be legally bound to pay the mileage tax from its bus terminal in Birmingham to its bus station within the City of Montgomery, including the miles of streets traversed within the City of Birmingham, the miles of streets traversed on its route between Birmingham and Montgomery, and the miles of streets traversed within the corporate limits of the City of Montgomery. In other words, the mileage tax covers the distance traveled between the terminal within the City of Birmingham to the station within the City of Montgomery. If the bus traveled over the streets of incorporated cities and towns between the terminal in Birmingham and the station in Montgomery, the mileage tax would also cover the miles traveled within the intervening incorporated cities and towns along the route.

Section 1 of the Alabama Motor Carrier Act of 1931, provides:

"Section 1. The following words and phrases used in this Act, when not inconsistent with the context, shall be construed as follows:

"The term 'commission' shall be construed to mean the Alabama Public Service Commission; the term 'commissioner' shall mean one of the members of such commission; 'motor transportation' shall be construed to mean the business of carrying and transporting passengers or property in motor propelled vehicles of any kind whatsoever for hire as common carriers over any public street, alley, road or highway in this State, except transportation solely and wholly within the limits of any municipality and/or within the police jurisdiction thereof; the term 'motor propelled vehicle' or 'motor vehicle' when used in this Act shall be held to mean any automobile, automobile truck, automobile or motor bus, or any other self propelled vehicle or vehicles used in connection therewith not operated or driven upon fixed rails or tracks; **the term 'highway' as used in this Act shall be construed to mean any public road, street or alley dedicated to public use,**

and-or maintained by the expenditure of public funds, whether within or outside any incorporated city, town or village; the term 'motor transportation company' shall be construed to mean any corporation, person, partnership or association, or the lessees, trustees, or receivers thereof, owning, controlling, operating and-or managing (1) any motor propelled vehicle not operated on or over rails, used in the business of transportation of passengers or property for hire as a common carrier over any highway in this State, or (2) any terminal or station facilities for passengers, freight or express transported by such company."

It will be noted that the mileage tax does not cover transportation solely and wholly within the limits of any municipality and-or within the police jurisdiction thereof. In other words, if the transportation is within the limits of the municipality or within the police jurisdiction of such towns or cities, the Commission is without authority to impose the mileage tax for such transportation.

Section 5 provides:

"Section 5. Every motor transportation company doing business in this State and subject to the control and jurisdiction of the Commission shall pay to the State as contribution to the maintenance, repair and policing of **its public highways** for each mile actually operated within the State over **such public highways** a mileage tax of one-fourth cent per mile on all passenger vehicles with a seating capacity of sixteen passengers or less; * * *"

The word "highways" is used twice in the part of Section 5, quoted above. This word is used as defined in Section 1, above referred to. In other words, the word "highways" as used in the part of Section 5 just quoted, means any public road, street or alley dedicated to public use, and/or maintained by the expenditure of public funds, whether within or outside any incorporated city, town or village.

In answer to the question found in the sixth paragraph (second page of your letter), I am of the opinion that the mileage tax provided in the Act covers the miles of bridge and bridge approaches of the Cochrane Bridge, a private corporation owned and operated by the Mobile Bay Bridge Company. The mileage tax covers the miles traveled on and over the bridges and the approaches to the bridge. The Mobile Bay Bridge Co., is a public utility, and has certain rights in and control of its property known as the Cochrane Bridge. However, the State still exercises its police power over all of these roads and bridges. It will be noted that the mileage tax is collected as contribution to the maintenance, repair and **policing** of its public highways. There can be no doubt of the right of the State to collect such a tax from the Mobile Bay Bridge Company under the police powers of the State.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 8 1931

Hon. Robert A. Moody,
Sheriff, Marshall County,
Guntersville, Alabama.

1. Confessions of judgment in open court are taken by the presiding judge.

2. Sheriffs—their responsibility in the collection of executions.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of July 31, 1931, in which you request my opinion on the following matters:

1. Who approves the bond and accepts the sureties on a confession of judgment in a criminal case taken in open court?

2. Is the Sheriff responsible if the bond is not collected when due?

Answering your first question, I call your attention to Section 5288 of the Code of Alabama, 1923, which is as follows:

"Confession of Judgement by Defendant for Fine and Costs.—When a fine is assessed, the court may allow the defendant to confess judgment, with good and sufficient sureties, for the fine and costs."

When a confession for fine and cost is made in open court the court takes the confession, after ascertaining that the sureties offered by the defendant are good and sufficient. The Court in ascertaining this may cause the defendant and his sureties to be examined orally as to their financial responsibility.

Goldwater vs. Mayor & Aldermen of Huntsville, 120 Ala. 182,
State of Alabama for the use of Montgomery County vs. Allen, 71 Ala. 543,
Bowen vs. State, 98 Ala. 83.

Answering your second inquiry, I presume where you use the word "bond" you refer to the confession of judgment by the defendant in open court. When an execution is issued on a confession of judgment in a criminal case the collection of same becomes a civil process.

State of Alabama for the use of Montgomery County vs. Allen, 71 Ala. 543.
Hearn et al vs. State, 62 Ala. 218.

When execution comes into the hands of the Sheriff in any matter, it becomes his duty to exercise due diligence in its collection. As to the Sheriff's duty in such matters, see Section 6654, Code of Alabama, 1923. Of course this Section does not mean that when an execution comes into the hands of the Sheriff for collection he is liable if he fails to collect same no matter what the circumstances are. The law does not require the impossible of him. It might be that the sureties and the defendant had become insolvent since the execution of the confession or the Court might have been deceived in taking the confession as to the solvency of the defendant and his surety. Then in such event the Sheriff could not be held liable, but as stated above, he must exercise due diligence in trying to realize on the execution and this is all that is required of him.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 12, 1931

Hon. P. C. Black,
Probate Judge, Geneva County,
Geneva, Alabama.

Court of County Commissioners' authority to allow claim for services of watchman.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of July 3rd, 1931, in which you request an opinion of this office on the following matter:

You state that the former sheriff whose term of office expired on January 19, 1931, has filed a claim with the court of county commissioners, for the services of a night watchman during the twelve months preceding the expiration of his term. The amount claimed being $1200.00 or $100.00 per month.

You ask whether or not the court of county commissioners can legally allow this claim.

I am of the opinion that if the services were actually rendered the court of county commissioners would be authorized to pay a reasonable sum to the watchman for the services so rendered. However, the amount to be allowed is a matter within their discretion, in the absence of any contract.

Section 4879, Code of Alabama, 1923, is as follows:

4879. Prisoners shall not be confined in any jail or prison in this state when such jail or prison is not provided with a deputy, watchman, or attendant, whose duty it shall be to watch the jail or prison at night for the prevention of escapes, and fire, and to aid in case of sickness among the prisoners, and who shall have access to the jail or prison and to the prisoners. If the state prison inspector is satisfied, after inspection, that the construction and management of a jail is such as to render a night watchman unnecessary, he may by written order to the sheriff suspend the appointment of said watchman, this order to be subject to revocation at the discretion of the prison inspector. The sheriff in case of a county jail, or the proper governing authority, in case of a municipal jail, shall appoint, direct, and control said deputy, watchman or guard, and the court of county commissioners or board of revenue, or the proper municipal governing authority, as the case may be, shall fix a reasonable salary and the same shall be paid out of the funds of the county or of the municipality, if it be a town or city jail, in which the jail is located."

This statute provided for a watchman, except in certain instances, and the salary he is to receive is to be fixed by the court of county commissioners.

This office cannot say that the claim for $1200.00 should be paid, as the amount is a question of fact to be determined by the court of county commissioners.

However, if the services were actually rendered, and the prison inspector has not suspended the appointment of such watchman, the court of county commissioners would be authorized to allow a reasonable sum for such services.

It is my opinion that this claim must be filed by the watchman as the statute does not authorize it to be paid to the sheriff.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 12, 1931

Mrs. Gertrude P. Calloway,
County Treasurer, Chilton County,
Clanton, Alabama.

Prisoners—Removal of under order of Prison Inspector and removal of during time jail is closed—Sheriff's fees, etc.

Opinion by Assistant Attorney General McCall.

Dear Madam:

I have copy of your letter of May 22, 1931.
You state the following:

"On or about April 4th, 1931, the State Prison Inspector ordered the Jail of Chilton County, closed for rebuilding under Section 4861 of the Code and ordered the prisoners therein confined removed from the said jail to the jail of Montgomery County, until further notice. Since that time the Sheriff of this County has removed the prisoners that were then confined in the jail, to the Montgomery County Jail, and has had to take there for confinement many prisoners coming into his custody since that time. The question now arises as to how the Sheriff shall be paid for these services and in that respect I wish to ask the following questions."

You request my opinion:

1. Do the provisions of Sections 4861 and 4862, Code of Alabama, 1923, stating that removal shall be at the expense of the County, apply only to the prisoners **first removed** and to those **finally returned**, or do those provisions apply to all prisoners that the Sheriff may confine in the Montgomery County Jail?

2. In the event that any of the charges are payable under the above Code Sections, is this a general charge against the County which must be presented as a claim and audited and allowed by the Commissioners Court and paid out of the General Funds.

3. What is your construction of the provision in Section 3741 allowing the Sheriff certain fees for transporting such prisoners that is—

(a) Can the prisoner upon conviction be sentenced for such costs?

(b) If a prisoner cannot be sentenced for such costs and execution is returned "no property found," or in the event he is acquitted, how and out of which fund are the said costs of the Sheriff payable?

4. In what manner should the proof be made of actual travelling expenses of the "Sheriff, or deputy, guard or guards, prisoner or prisoners" while on the trip?

5. Would it be sufficient for the Sheriff to file in the case a sworn statement of travelling expenses mentioned in question four?

6. If under Section 3741, the Sheriff transports three or more prisoners to the Montgomery County Jail, is he entitled to the per diem allowed, as to each prisoner, and if not, how should such charge be taxed? Should it be prorated?

7. In such cases, is the Sheriff authorized to take with him and charge for a deputy, or more than one deputy, besides himself, if necessary, and how should this be shown?

8. Under Section 3741, and relative to the transportation of these prisoners, is the Sheriff restricted to any particular mode of transportation, that is, can he transport them by automobile or train, at his option?

In answer to your first question will state that the provisions of Sections 4861 and 4862, as to the County bearing the expense of removal and return of prisoners, apply only to those prisoners **who were confined in the jail at the time it was closed.** An examination of Section 14 of the Act approved April 8, 1911 (General Acts 1911, pp. 360, 361) of which Sections 4861 and 4862, Code of Alabama, 1923, are a codification, shows that Sections 4861 and 4862 were parts of the same Section of the original act. You will note that Section 4861 refers only to the prisoners "confined" in the jail at the time it is ordered closed, and that Section 4862 refers to "said" prisoners—meaning the prisoners mentioned in Section 4861. Examination of the Act mentioned makes this clear.

Opinion of Attorney General, May 20, 1931,
Sheriff, Chilton County, (Vol. 4, office edition, pp. 136, 137).

Answering your second question will state the charges payable by authority of Sections 4861 and 4862, relate only to prisoners in the jail when same was ordered closed by the Prison Inspector. The charges under these Sections are general in nature, and must be presented, audited and allowed by the Commissioners Court and paid out of the general funds of the County.

Answering your third question will state that as to those prisoners removed or returned under Sections 4861 and 4862, Code of Alabama, 1923, the expenses of their removal and return are not taxed against them, but are borne by the County whose jail is closed. As to those persons arrested and confined after the closing of the jail, the expenses of their removal is governed by Section 3741 and taxed as therein provided. The foregoing should clarify the matter referred to in (b) of your third question.

Answering your fourth question, the proof should be made by itemized, sworn statement, with production of receipts for any expenses incurred.

Answering your fifth question—see answer to question four.

Answering your sixth question, if the Sheriff, acting under Section 3741 transports three or more new prisoners to the Montgomery County Jail, during the time the Chilton County Jail is closed, he is entitled to such guards as may be allowed under Section 3746, and to the per diem allowed in Section 3741, as to each prisoner, and the traveling expenses, if he or his deputy transport them, and, if there is a guard allowed, then

the per diem and expenses of same. The allowance of per diem for the Sheriff in such case would be $9.00 and for the guard $2.00. There would not be a charge of $2.00 against each prisoner if there were only one guard.

The travelling expenses of the Sheriff, or his Deputy, and the guard or guards and prisoners, and the per diem of the guard, should be prorated.

Answering your seventh question, the Sheriff is authorized to charge for only such guard or guards as may be allowed under Section 3746 which must be shown to have been complied with before this extra expense is charged.

Answering your eighth question, the Sheriff is not restricted to any particular mode of transportation but in seeking reimbursement for expenses and per diem is entitled to only so much as might be incurred in travelling by the **nearest** route **usually** travelled between Clanton and Montgomery.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 15, 1931

Hon. Chas. C. Greer,
Superintendent of Insurance,
CAPITOL.

Life insurance companies contracting to purchase a funeral not affected by House Bill No. 672.

Opinion by the Attorney General.

Dear Sir:

This is to acknowledge receipt of your letter of August 11, 1931, in which you inquire whether or not House Bill No. 672 of the recent session of the Legislature, affecting burial companies, associations and societies, applies to an insurance company in whose contract with the insured there is a provision for defraying the expenses of a funeral.

I understand from the consideration of the Act of the Legislature in question that it was intended to apply to "companies or associations, * * *, and all individuals, firms, and co-partnerships **doing the business of providing burial or funeral benefits**." A consideration of the contract of the Liberty National Life Insurance Company discloses that notwithstanding the fact that there is a provision in the policy to provide for a funeral, the

expenses of which is not to exceed a certain amount, such Life Insurance Company is not engaged in doing the business of providing burial and funeral benefits within the meaning of Section 1 of the Act above referred to.

While it is true that the Life Insurance Company contracted with the morticians to bury its policy holders, at the same time I am of the opinion that the Life Insurance Company in question is acting as the agent of the insured rather than that of the mortician or undertaker. I am of the opinion that the Liberty National Life Insurance Company is not violating the provisions of House Bill No. 672.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 18, 1931

State Tax Commission,
CAPITOL.

Attention Mr. J. R. Gamble.

Drivers of motor trucks used solely for private purposes are not required to take out chauffeur's license.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of July 28th in which you ask the following questions:

"1. A section of a State Highway is now being paved. The job was contracted and the contractors have hired drivers for their trucks. Are these drivers liable for chauffeur's licenses?

"2. An owner of an ice plant delivers his product to his customers in his own trucks. Are the drivers of these trucks liable for chauffeur's licenses?"

In reply I beg to call your attention, opinion under date of April 5, 1927, to Hon. William L. Harrison, Associate Member, State Tax Commission, (Biennial Report of 1926-1928, page 155) in which it was said:

"It is my opinion that every person who is employed to drive a motor vehicle in this state and who receives compensation therefor, excepting the agents of manufacturers of motor vehicles, proprietors or garages and dealers, salesmen, mechanics, or demonstrators of motor

vehicles when driving the vehicles in any such capacity, must pay a chauffeur's license, provided said motor vehicle is one which is put to public use, and that no person who drives a motor vehicle which is devoted to private use, is required to pay a chauffeur's license, even though he may receive compensation for such service."

Under the facts set out by you in both cases the operation of the motor vehicle is not in a public capacity but the use is entirely private and therefore under the opinion above quoted, it is my opinion that there is no chauffeur's license due in either of the cases set out by you in your letter.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 18, 1931

State Tax Commission,
CAPITOL.

Attention: Mr. John S. Mooring.

Corporation which is qualified to do business and pay the corporation permit fee is liable for franchise tax on the amount of capital employed in Alabama.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of June 22, 1931, in which you state:

"A corporation in Mobile has qualified to do business in this State and has paid the corporation permit fee. This corporation submitted a franchise tax return showing ownership of property in this State, which if properly counted as capital employed will establish a franchise tax liability of something over $300.00. This corporation has made application, or served notice that it would withdraw its application for a permit and request the return of the $10.00 paid for this permit. It further claims that it does no business in this State except to own and manage the property referred to. It refers to holdings of our Supreme Court that the ownership of lands by foreign corporations does not constitute doing business and that, therefore, it is not necessary for this corporation either to qualify to do business in Alabama or to pay the corporation permit fee. The corporation permit fee has already been paid and, of course, this Commission has no means of refunding the amount, nor does it think that the amount should be refunded since it was paid voluntarily by the corporation. In other words, the corporation has qualified itself in every

way to transact business in this State and it enjoys the rights for which it has paid, whether it avails itself of these rights or not.

"The immediate question is as to the franchise tax. Having qualified and having the right to do business in Alabama and being free to exercise this privilege at any time, this Commission has held that the value of property owned in this State is capital employed.

"Please give us your opinion whether the franchise tax can be collected in this case."

In reply thereto I beg to advise that in my opinion this corporation is liable for franchise tax on the amount of capital employed in Alabama.

While it is true that the mere ownership of property is not strictly speaking doing business in Alabama, such as to require qualification under our laws, yet if a corporation voluntarily chooses to qualify, in my judgment it is doing business and is subject to the payment of the franchise tax based on the amount of capital employed in Alabama.

Section 232 of the Constitution is as follows:

"No foreign corporation shall do any business in this State without having at least one known place of business and an authorized agent or agents therein, and without filing with the secretary of state a certified copy of its articles of incorporation or association. Such corporation may be sued in any county where it does business, by service of process upon an agent anywhere in the state. The legislature shall, by general law, provide for the payment to the State of Alabama of a franchise tax by such corporation, but such franchise tax shall be based on the actual amount of capital employed in this state. Strictly benevolent, educational, or religious corporations shall not be required to pay such a tax."

It will, therefore, be seen that in the contemplation of the Constitution-makers every corporation doing business was required to qualify and that "such corporation" meaning such qualified corporation is required to pay a franchise tax on the amount of capital employed in Alabama.

The foregoing has been the uniform administrative procedure of the franchise tax department and, in my judgment, is the meaning and intent of the law.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 18, 1931

State Tax Commission,
CAPITOL.

Where a person is doing business as a plumber, he is liable for license wherever he is doing business whether he has an established place of business in such town or not.

Opinion by Assistant Attorney General Moore.

Gentlemen:

I have your letter of June 23, 1931, in which you state:

"Schedule 87, Section 361, p. 282, Acts 1919, provides:

" 'For each person doing business as a master plumber, or steam fitter, or tin shops in towns or cities of ten thousand or more inhabitants, twenty-five dollars, in all other places, ten dollars.'

"In an opinion to this office, dated February 10, 1931, it was held by you, in part:

" 'As plumbing is conducted now, it is usually conducted as a business and the word 'master plumber' in Alabama at this date is practically obsolete. Construing the Section in this light and especially by the insertion of the words 'tin shops,' it is my opinion that this is a business license rather than a personal, occupational license and I so hold. The opinion of this office above referred to being the opinions of the Attorney General, 1918-20, p. 648, holding to the contrary is therefore overruled.'

"In an opinion rendered subsequent to the foregoing, in which it was held that the license was not an individual, personal license, but was levied on the 'business', your office rendered an opinion, O. A. G. 1928-1930, p. 483, providing in part as follows:

" 'License Tax. Plumber not required to pay license under Schedule 87, Revenue Acts, 1919, unless he maintains a regular place of business * * * *. Therefore, I am of the opinion * * * * that the plumber would not be liable unless he maintains a regular place of business."

You ask my opinion on the following questions:

"(a) Would a plumbing concern regularly engaged in business in, say, Columbus, Georgia, be liable for license for doing business in Alabama under the following conditions:

"1. Where their clients or customers live just across the river in Alabama and the concern naturally was not required to maintain any established place of business or shop in this State since they could be reached by crossing the river or by local telephone?

"2. For accepting orders or requests to do such business in Auburn or Montgomery, or some other town in Alabama, not merely just across the river, where they maintained no established place of business, and merely did such plumbing as the orders or contracts received at their Columbus, Georgia, office required?

"3. Provided it is decided by you that liability for license, under either 1 or 2 above, exists, would license taken out in either of the towns mentioned entitle the holder thereof to engage in the plumbing business in all other towns in Alabama, provided no regularly established place of business was maintained?

"(b) Where a concern regularly engaged in the plumbing business in one city or town in this State accepts orders or contracts to do business in another city or town, also in this State, would additional license be required, provided no regularly established place of business was maintained in such other city or town, and such business was done only on orders or contracts received at its regularly established place of business in the other city or town?

"(c) Would liability in either 1, 2, 3, or (b) depend upon or be affected by the population of the city or town in which established place of business was maintained or license paid in this State, and if so, how?"

The Schedule which you quote provides for license upon each person "doing business." Under the most recent opinion of this office, this Schedule was held to provide for a business license rather than for a personal occupational license. While the opinion to which you refer in Biennial Report, 1928-1930, page 483, held that a person is not liable for plumber's license unless he maintained a regular place of business, I am of the opinion that this was based on the definition quoted therein of a master plumber. The opinion of February 10, 1931, specifically held that the use of the words "master plumber" were inapt and the license was on the business of plumbing. I, therefore take it that this opinion in effect overrules that part of the opinion of June 24, 1929, (Biennial Report 1928-30, page 483) just referred to. Plumbing is therefore a business not dissimilar to contracting so far as the liability for license arises. Therefore the liability exists where the business is done and if the business be carried on in more than one place, then there is liability, in my opinion, for the license provided for by Schedule 87 in whatever towns or cities where liability exists under law.

Coming to your specific questions, my opinion is as follows:

In answer to question (a), subsection 1, I believe the concern or concerns are liable for plumber's license if the work is done in Alabama, if the size of the town in which it is done is such as to create liability.

In answer to question (a), subsection 2, under the foregoing reasoning I think liability exists.

In answer to question (a), subsection 3, it is my opinion that the taking out of a license in one town does not exempt the party from the payment of license in other towns where license was required and in which he is doing business.

In answer to question (b) it is my opinion that the plumber would be liable in whatever cities or towns where he was doing business and where license is required.

I believe the foregoing answers question (c) but the Act itself specifically provides a license in towns or cities of ten thousand or more inhabitants of $25.00, and in all other places $10.00. It has been repeatedly ruled by this office that "all other places" in this connection meant all other incorporated places, and therefore no liability would exist in an unincorporated town or in the country.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 18, 1931

Hon. Roy O. Hill,
Clerk Circuit Court, Houston County,
Dothan, Alabama.

Bonds: Approval of bonds made by surety or guaranty company authorized to do business in this state.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of June 29, 1931 in which you inquire as to whether or not, you, as Clerk of the Circuit Court, would be protected on your official bond if you accepted an appeal bond made by a surety or guaranty company authorized to do business in this state.

I am of the opinion that your question should be answered in the affirmative.

Section 6139, Code of Alabama 1923 provides as follows:

> 6139. Liability for taking insufficient surety on appeal bond.—For taking insufficient surety the clerk, register, or judge of probate, is liable to the appellee for the damages thereby sustained. **Unless the surety was generally reputed good for the amount when he was received;** but the clerk, register, or judge of probate, is not required to receive anyone as surety, who refuses to answer on oath as to his sufficiency.

I am of the opinion that that part of said section, "unless the surety was generally reputed good for the amount when he was received," is fully complied with when the surety bond is executed by the surety or guaranty company authorized to do business in this state in view of Article 7, of Chapter 45 (Sections 2640-2658) Code of Alabama 1923, and particularly so in view of Section 2640, Code of Alabama 1923, which provides in part as follows:

> "* * * When any person * * * is required * * * to execute any bond * * * in any judicial proceeding * * * the court officer * * * charged with the duty of approving such bond * * * may * * * approve the same when executed by a corporation * * * as surety, having complied with the provisions of this article; and the execution by any such corporation as surety, of any such bond * * * **shall be, in all respects * * * a full and complete compliance with the requirements of any law** * * * requiring (that) such bond * * * shall be executed by one surety, or by one or more sureties or that such surety or sureties shall be residents of the State or any county therein or shall be householder, or freeholder, or either or both, or shall possess any other qualification."

It is clear from reading said Section that it was the intention of the Legislature in enacting same to give an officer, charged with the duty of approving official or court bonds, authority to approve same when executed by a guaranty company which had complied with the provisions of the Article, regardless of what the law required as to the qualifications of sureties on such bonds.

Biennial Report Attorney General 1922-24, p. 371.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 18, 1931

Hon A. F. Harman,
State Superintendent of Education,
CAPITOL.

Schools: Garage for housing motor vehicles not a "school building" within the State Law allowing State aid in the erection, repair or equipment of "school buildings."

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of July 7, 1931. You request my opinion.

"Will I be justified in approving an application for State Aid in the erection of a garage to house automobiles used in transporting school children in Talladega County, provided this building is located on property deeded to the State?"

My answer is in the negative.

A storage garage is not a "school building" within Article XVIII, Alabama School Code, 1927. The article clearly shows it refers to what are commonly known as school houses **in which the school children are to be taught,** and to teachers' houses. The "equipment" is the equipment that is to go into such a school house.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 18, 1931

Hon. Seth P. Storrs, Commissioner,
Department of Agriculture & Industries,
Montgomery, Alabama.

Under Section 2171 of the Civil Code of Alabama it is unlawful for any municipality to charge the farmers or others engaged in the production of farm products of whatever nature, any license or fee, for the sale or other disposition of said articles produced by them at any place; the City of Gadsden is without authority in law to adopt an ordinance providing that farmers of the State of Georgia shall procure a license from the City of Gadsden before selling peaches in the City of Gadsden; such an ordinance discriminates against the citizens of the State of Georgia in favor of the citizens of Alabama and is violative of State and Federal Constitutions.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I beg to acknowledge receipt of your letter of August 7th as follows:

"I have had numerous requests from farmers out of the State inquiring whether they could sell farm products produced by them in the State of Alabama without paying any city license of any kind. I have advised these inquiring that where they produce the farm prodcusts themselves that they could sell it in any town in the State without license the same as Alabama farmers. My advice to them was based on Section 2171 of the Code which in part says: "articles produced **by** them, **at any place.**" Only yesterday one of the farmers from Georgia whom I had so advised was arrested in Gadsden for violating local ordinances by selling peaches not produced in Alabama. I talked over the telephone to Mr. M. C. Silvy, City Attorney of Gadsden, and he advised that he construes the law **"at any place"** to mean at any place in Alabama and that the ordinance is valid in as much as it only excludes farmers from other states.

"I would appreciate very much if you would give me a very careful opinion on this point as it is a very important question since every consumer and every producer, which means every citizen of Alabama, is vitally interested in the decision which you may make. To illustrate the importance, at present time there is a milk war in progress at Birmingham in which bombs have been used and people killed which is probably based on the large supply of milk being hauled from Mississippi into Birmingham.

I would appreciate it very greatly if you could give me this opinion at the earliest possible moment."

You state that the City of Gadsden has an ordinance which requires a license of non-residents who sell farm products in the City of Gadsden; that the non-resident has violated the City ordinance by selling peaches not produced in Alabama. You inquire whether such an ordinance is valid inasmuch as it only excludes farmers from other States. In other words, you state that such a license is not required of Alabama farmers but is required of farmers from other States.

Section 2171 of Volume One of the Political Code of Alabama of 1923, at page 1110, provides as follows:

"2171. No License for Farm Products Charged to Farmers.—It shall be unlawful for any municipality to charge the farmers or others engaged in the production of farm products of whatever nature, any license or fee, for the sale or other disposition of said articles produced by them, at any place."

Paragraph Three, Article One, Section Eight of the Constitution of the United States provides that Congress shall have the power:

"To regulate commerce with foreign nations, and among the several states, and with the Indian tribes."

Section Two, of Article Four of the Constitution of the United States provides that:

"The citizens of each State shall be entitled to all privileges and immunities of citizens of the several states."

Section One of Article Fourteen (articles in addition to, and amendment of, the Constitution of the United States) of the Constitution provides:

"Section 1.—All persons born or naturalized in the United States, and subject to the jurisdiction thereof, and citizens of the United States and of the State where they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

Section One of the Constitution of Alabama of 1901 (Article 1, Declaration of Rights) provides:

"That all men are equally free and independent; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness."

Section Thirty-five of the Constitution of Alabama of 1901, (Article One, Declaration of Rights) provides:

"The sole object and only legitimate end of Government is to protect its citizens in the enjoyment of life, liberty and property, and when the Government assumes other functions it is usurpation and oppression."

Section Eighty-nine of the Constitution of Alabama of 1901 provides:

"The legislature shall not have power to authorize any municipal corporation to pass any laws inconsistent with the general laws of this State."

The question presented is whether the City of Gadsden is authorized in law to adopt an ordinance providing that farmers from the State of Georgia shall not sell peaches in the City of Gadsden without first procuring a license from the said City. The Legislature of Alabama by Section 2171 has provided that it shall be unlawful for any municipality to charge the farmers or others engaged in the production of farm products of whatever nature, any license or fee, for the sale or other disposition of said articles produced by them, at any place. The City of Gadsden has adopted

an ordinance which, in effect, provides that farmers from the State of Georgia selling their produce in the City of Gadsden are not to be granted the immunities and privileges provided by Section 2171 but shall be governed by a different rule, namely, a rule which requires the Georgia farmer to procure a license before he will be permitted to sell his products in Gadsden, Alabama. Thus, the question is squarely presented. Alabama exempts its farmers and the City of Gadsden provides a license for non-resident farmers. Is such an ordinance valid?

I am of the opinion that such an ordinance is totally and wholly invalid and ineffective. The Supreme Court of the United States on many occasions has declared such a law violative of the Federal Constitution. It is well settled that no State, nor a municipality of any State, can, consistently with the Federal Constitution, impose upon the products of other states, brought therein for sale or use, or upon citizens because engaged in the sale thereof, or in the transportation thereof, of the products of other states, more onerous public burdens than it imposes upon the like products of its own territory. If this were not so, it is easy to perceive how the power of Congress to regulate commerce with foreign nations and among the several states could be practically annulled, and the equality of commercial privileges secured by the Federal Constitution to citizens of the several States be materially abridged and impaired. The concession of such a power to the states, or to any municipality of any state, would render wholly negative all National control of commerce among the several States, and place the trade and business of the country at the mercy of local regulations, having for their object to secure exclusive benefits to the citizens and products of a particular State.

In the case of Walling vs. Michigan, 116 U. S., 446, an Act of the State of Michigan, which imposed a tax or duty on persons who, not having their principal place of business within the State, engaged in the selling, or of soliciting the sale of certain described liquors, to be shipped into the State, was held to be repugnant to the Commerce clause of the Federal Constitution as being a discriminating tax levied against persons for selling goods brought into the State from other States. In that case the Court said, at page 445:

> "A discriminating tax imposed by a State operating to the disadvantage of the products of other States when introduced into the first mentioned State is, in effect, a regulation in restraint of commerce among the States, and as such is usurpation of the power conferred by the Constitution upon the Congress of the United States."

In the case of Welton vs. State of Missouri, 91 U. S. 275, in discussing this principle, Mr. Justice Field has the following to say:

> "A statute of Missouri which requires the payment of a license tax from persons who deal in the sale of goods, wares, and merchandise, which are not the growth, produce, or manufactures of the State, but going from place to place to sell the same in the State, and re-

quire no such license tax from persons selling in a similar way goods which are the growth, produce, or manufactures of the State, is in conflict with the power vested in Congress to regulate commerce with foreign nations and among the several States."

In the case of Amos Byrd & Co. vs. Thompson, 274 Federal Reporter, 702, this principle is discussed most interestingly and almost every phase covered.

The Supreme Court of Alabama has, on numerous occasions, recognized the principles enunciated above.

In the case of the Woco Pep Company of Montgomery vs. the City of Montgomery, 213 Alabama, 452, Mr. Justice Thomas has the following to say on this subject:

"An ordinance may become objectionable, in the administration thereof, if it be not uniformly applied, as it must be under the authorities, State and Federal.—Wick Wo vs. Hopkins, 118 U. S. 356, 6 S. CT., 1064, 30 L. ED. 220; Board of Commissioners vs. Orr. 181 Ala. 308, 61 So. 920, 45 L. R. A. (N. S.) 575. It provides that it shall be unlawful for any seller or distributor having no place of business either within the City of its police jurisdiction, to make any sales or deliveries of gasoline or kerosene therein, without first obtaining a permit from the City Clerk to do so; and it provides no uniform rule or action or reasonable regulation as to the issuance of the permit; and it provides a penalty or criminal punishment for the failure to obtain such permit before making sale or delivery. It reserves the City or its officials the right to grant or withhold the privilege arbitrarily * * * *"

In the case of McCreary, et al vs. the State, Mr. Justice Sommerville has the following to say:

"It was settled by the Supreme Court of the United States—Welton vs. State of Missouri, 91 U. S. 275, and by this Court—Vines vs. the State, 67 Alabama, 73, that a state cannot, either in the exercise of its taxing, or of its police power, discriminate in favor of its own products and manufactures, and against the manufactures and products of other States. The more recent case of Webber vs. Virginia, 103 U. S. 344, fully sustains the same doctrine. Under the principle settled in these cases, it is obvious that the proviso of the Act in question is unconstitutional and, therefore, conferred no authority upon the defendant to sell vinous liqueurs within the prohibited district."—Woodruff vs. Parham, 8 Wall, 123; Brown vs. Maryland, 12 Wheat, 449; Joseph vs. Randolph, 71 Alabama, 499; Tiernan vs. Rinker, 102 U. S. 123.

The McCreary case involved an Act of the Legislature prohibiting under penalty the sale or other disposition of spirituous, vinous or malt

liqueurs or intoxicating beverages or bitters in Monroe and other Counties, and provided further that nothing contained in the Act shall prevent any person from selling wine, in quantities less than one quart, made in this State from grapes raised therein. The McCreary case holds that such a statute is a discrimination against imported wines manufactured from grapes raised in any of the other States, or in foreign countries, and in favor of wines manufactured from grapes raised in this State, and is, therefore, violative of the Constitution of the United States and is void.

In the case of Bogan vs. the State, 84 Alabama, 449, a certain part of the Act was declared void as an unconstitutional discrimination against the citizens of other States. The Act permitted citizens of Alabama to sell domestic wines but declined this right, under penalty, to citizens of other States.

In the case of Vines vs. the State, referred to above, the defendant was indicted for peddling sewing machines without license. The Code of 1876 required that licenses for certain occupations must be obtained and fixed the sum to be paid for each license. The eighth sub-division of the pertinent section provided a license for peddlers in a wagon, for peddlers on a horse, and for peddlers on foot, and provided that the license entitled the peddlers to peddle only in the city where it was taken out and that the license did not apply to any article produced or manufactured in this State. In that case Mr. Chief Justice Brickell held that the statute manifestly discriminated in favor of the products and manufactures of the State, and against products or manufactures introduced into it from other states or from foreign countries; that such discrimination in favor of the citizens of Alabama, and the products and manufactures of the State of Alabama should not be made; that a State cannot, either in the exercise of its taxing power, or its police power, discriminate in favor of its own products and manufactures, and against the manufactures and products of other States.

As indicated, the ordinance of the City of Gadsden is invalid. No license is required of Alabama farmers to sell peaches. No question of the

of the ordinance in question, says that Georgia farmers will not be allowed to sell peaches unless and until a license is procured and that the selling of peaches, without procuring a license, constitutes an offense, for which a penalty is provided. This means that Alabama farmers may sell peaches in the City of Gadsden without procuring a license and that Georgia farmers cannot sell peaches in the City of Gadsden without first procuring a license. This is a clear discrimination against the citizens of the State of Georgia. Such an ordinance is undoubtedly void and ineffective.

Mr. Cooley in his Third Edition on the Subject of Taxation, on page 168 of Volume One, states the principle very concisely and clearly

The Federal Constitution provides that citizens of each State shall be entitled to all the privileges and immunities of the citizens of the several

states, and that no State shall make or enforce any rule which shall abridge the privileges or immunities of citizens of the United States. The purpose of this provision is to preclude the several States from discriminating in their legislation against the citizens of other States. Therefore, a State law which imposes upon citizens of other States taxes or duties that are not imposed upon citizens of the State imposing such taxes and duties is void. The State law is void which provides that no person shall engage in a particular employment unless he is a resident of the particular State. This, in effect, is what the Gadsden ordinance does.

The various provisions of the State and Federal Constitution quoted in the first part of this opinion are discussed in detail in the citations noted hereinbelow. In addition to the authorities mentioned below, I refer you to the cases cited under the several provisions of the State and Federal Constitution referred to above, together with the decisions cited at pages 168 and 169, Volume One, Third Edition, of Cooley on Taxation.

McCreary vs. State, 73 Ala. 482;
Powell vs. State, 69 Ala. 13;
Vines vs. State of Ala. 67 Ala. 73;
Seymour vs. State, 51 Ala. 52;
Joseph vs. Randolph, 71 Ala. 499;
Wiley vs. Parmer, 14 Ala. 627;
Bogan vs. State, 84 Ala. 449;
Woco Pep Co. of Montgomery vs. City of Montgomery, 213 Ala. 452;
Welton vs. State of Missouri, 91 U. S. 275;
Tiernan vs. Rinker, 102 U. S. 123;
Amos Byrd & Co. vs. Thompson, 274 Federal Reporter, 702;
I. M. Donnell & Son Co. vs. City of Memphis, 208 U. S. 113;
Cooley on Taxation, Volume One, Third Edition, 168, 169, 170, 171;
Huntsville vs. Phelps, 27 Ala. 55.

All cases cited under several provisions of the State and Federal Constitution.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

Hon. U. G. Davis,
Chairman, Commissioners Court,
Crossville, DeKalb County, Ala.

Counties—Contracts for courthouse repairs.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of July 25, 1931. You state that the commissioners court has designated you and another member to oversee and superintend certain work in the way of excavating for a basement and extra rooms and other repairs on the courthouse and for repairs at the jail and county farm, and has authorized you and the other member to employ day labor to do this work. You estimate the labor and material will cost approximately $5,000.00.

You request my opinion:

Has the commissioners court authority to proceed to do this work or have it done in this manner without letting a contract for it?

In answer will state that Section 210, Code of Alabama, 1923, contemplates all such work shall be done by contract, duly authorized by the court, as shown by its minutes. The contract should be in writing, and bond of the contractor should be given in compliance with an Act approved February 10, 1927, (General Acts, 1927, p. 37).

Therefore the answer to your question is in the negative.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 22, 1931

Hon. R. L. Shamblin,
Sheriff, Tuscaloosa County,
Tuscaloosa, Alabama.

Sheriff's Fees—Where search warrant is executed and the property is not found the sheriff is without authority to collect fees from the Fine and Forfeiture Fund of the County.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of July 7, 1931, in which you request my opinion as follows:

Is the sheriff of the county entitled to pay out of the Fine and Forfeiture Fund of the County for executing a search warrant where he is unable to find the property searched for.

It is my opinion you cannot collect fees of this character out of the Fine and Forfeiture Fund of Your County.

Section 4039, Code of Alabama, 1923, as amended by an Act approved February 18, 1927 (General Acts 1927, p. 45) sets out in detail what fees of officers may be chargeable against the Fine and Forfeiture Fund of the County, and I find that fees of the character that you refer to, are not included in this section, and, therefore, could not be charged against said fund.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 25, 1931

Hon. H. W. Owens,
Judge of Probate,
Abbeville, Alabama.

Bonds—county officers and county employees—construction of Act 478, H. 183, approved July 23, 1931.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of August 13, 1931 relative to the construction of Act No. 478, H. 183, approved July 23, 1931. Relative to said Act, you enquire as follows:

1. Are the terms "County Officers" referred to in section one of said act, and "County Employees" referred to in section two of said act, synonymous?

2. Should amounts of bonds of said "County Officers" be, by such governing bodies, fixed annually, thereby requiring such officers to execute bonds annually?

3. Or, is it the purpose of said act, that such governing bodies annually examine the bonds of such officers and/or employee and if the amounts and/or surety-ship of such bonds are by such bodies adjudged inadequate, should such bodies require new bonds of such officers and/or employees; otherwise, should the bonds executed by such officers and/or employees as originally executed, stand for the term or terms of such officers and/or employees?

4. Should premiums of bonds of such "County Officers" referred to in said section one, be paid by the county as is provided in said section two of said "County Employees?"

5: Do the provisions of said act repeal local statutes?
Said Act provides as follows:

Section 1. That the Boards of Revenue, the Courts of County Commissioners, or like governing bodies of all Counties in the State be and they are hereby empowered with the exclusive authority to fix each year the amount of the Official Bond of all County Officers in their respective Counties whose official bond is now required by law to be fixed or approved by any other authority. Provided, however, that all official bonds shall be made by a surety company authorized to do business in the State of Alabama.

Section 2. That such boards may at its discretion each year require any or all County employees who are entrusted with the handling of public funds to give bond in such amount and with such surety as it may require, and that the premium on such bonds shall be paid out of the County Treasury.

Section 3. That all laws and parts of law contrary to the provisions of this Act be and are hereby expressly repealed.

Section 4. That this Act shall become effective immediately on its approval by the Governor.

In answer to your first inquiry, I am of the opinion that the terms "County Officers" and "County Employees," as used in said Act, are not synonymous.

"County Officers" refers to those officers of the county who hold office by virtue of the Constitution or of some legislative enactment and whose duties are fixed by statute, such as Judges of Probate, Clerks of Circuit Court, Sheriffs, Tax Assessors, Tax Collectors, etc.

"County employees" refers to such professional, clerical, and other assistants whose duties are not prescribed by statute. In other words, those who hold office by virtue of some contractural relation alone.

In answer to your second and third inquiries, I am of the opinion that the bonds referred to in said Act should be fixed annually. It is specifically provided that the bonds be fixed each year.

In case the bonds so fixed prove to be inadequate, additional bonds may be required under authority of Article 8 of Chapter 45 (Sections 2659-2673, Code of Alabama, 1923).

In answer to your fourth inquiry, I am of the opinion that the premiums on the bond of County Officers should be paid by the County under authority of Section 2658, Code of Alabama, 1923 . Said Section must be construed in pari materia with the newly enacted act.

In answer to your fifth inquiry, I am of the opinion that all local laws or parts thereof in conflict with said act are repealed by virtue of section 3 thereof.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 25, 1931

Hon. Wm. J. Waldrop,
Clerk, Municipal Court,
Courthouse,
Birmingham, Alabama.

Section 32 of an Act approved July 12, 1915, Local Acts 1915, page 231 providing for the issuance of execution makes it the duty of the Clerk to issue execution as soon as practicable after five days from the entry of the judgment.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of April 13, 1931, in which you request my opinion as to the issuance of plaintiff's executions insofar as the same applies to the Municipal Court of Birmingham. You call my attention to Section 32 of the Local Acts of 1915, page 231, and also to Section 33 of said Act In your letter you state in part as follows:

"Our Municipal Court is used by our professional, mercantile, industrial and financial institutions for the purpose of collecting open accounts, notes, rents, etc., and in collecting same often times issuing as many as eight or ten garnishments in one case.

"There are some several thousand cases in this Court where plaintiff's execution has not been issued and since I have been Clerk with no extra help I have been unable to issue these executions.

"As the business of the Court is conducted as above outlined and there is a lack of sufficient clerical assistance to issue the executions immediately and as the law keeps the judgment alive for six years has not the Clerk the right to use his discretion as to the time of issuing such executions."

In reply I beg to advise that Section 32 of the Act above referred to is as follows:

"And it shall be the duty of the clerk of each division to issue an execution on all judgments rendered in said court, after five days from the entry thereof, and place the same in the hands of a constable or sheriff of said county who shall return such execution within thirty days thereafter, said return to show that he has collected said judgment, and has paid the same or the amount collected or is unable to find property of the person against whom said process issued, out of which said execution can be satisfied in whole or in part."

In my opinion this makes it the duty of the Clerk to issue the execution in each case as soon after the five days from the entry of the judg-

ment as he conveniently can. I do not think, as suggested in the last paragraph of your letter, that he can use his discretion indiscriminately as to the time of issuing the executions. However, he must issue the same as soon as he can considering the number of cases, the time consumed in his regular clerical work, and general considerations of this sort. I do not find a specific limit on the time in which the execution must be issued. The plain mandate of the statute, however, that the same be issued as promptly as the practicalities of the situation will permit.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 25, 1931

Hon. W. S. Jones,
Sheriff, Cullman County,
Cullman, Alabama.

Constable may serve search warrants for prohibited liquors anywhere in the County but are without authority to raid and capture stills outside his precinct or beat.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of June 23rd in which you request my opinion.

1st. As to the right of constables to serve search warrants issued for the purpose of seizing prohibited liquors.

2nd. As to their right and power to raid and capture stills outside of their respective beats.

Answering your first inquiry, I am of the opinion that the constable has the power and right to serve search warrants issued by Justices of the Peace to search for prohibited liquors anywhere in the County for the following reason:

Section 6899 in setting out his duties says among other things:

"To execute and return all summons, executions, **and other process to him directed by any lawful authority.**"

He may serve this warrant also under the authority of Section 4746, Code of Alabama, 1923. Section 4742, Code of Alabama, 1923, confers on Justices of the Peace the authority to issue search warrants in prohibition cases. Therefore, the Justice of the Peace is not limited in his jurisdiction

to his precinct in issuing such warrants, but may issue same to be executed in any part of the County. Therefore such warrants being directed to the constable and he being required to serve the same when so directed, he may do so in any part of the County.

Edmunds vs. State, ex rel Dedge, 199 Ala. 555.

Answering your second inquiry I do not think the constable of one precinct would be authorized to go out of his beat and indiscriminately raid and capture stills. I find no authority of law for such activities on his part. As stated above, he is only able to serve search warrants by special enactment, as cited above, to hold otherwise, would be in effect to clothe him with all the power of the Sheriff in such matters and could but end in a general confusion and clash of authority.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 26, 1931

Hon. M. T. Maxwell,
Clerk, Board of Revenue,
Tuscaloosa, Alabama.

Road Duty—World War Veterans drawing disability compensation not necessarily exempt.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of May 10, 1931 in which you inquire as to whether or not one who draws compensation from the U. S. Government under the Disability Veterans' Act is thereby entitled to exemption from road duty or the commutation tax in lieu thereof.

I am of the opinion that your question should be answered in the negative.

Section 1354, Code of Alabama, 1923, as amended by Section 164, Act approved August 22, 1927 (Acts 1927, p. 348) enumerates those who are exempt from road duty; and further provides how a certificate of exemption is obtained in cases of physical incapacity from performing hard labor. Said Section provides in part as follows:

"1354. Persons exempt from road duty.—All women, and all men under the age of eighteen and over the age of forty-five years; all persons who have lost an arm or leg; and all persons who, by nature

or disease, are rendered incapable of hard labor, who shall procure a certificate of such incapacity from the county board of health, are exempt from working on public roads, but where there is no county board of health, the certificate of such incapacity from two reputable practicing physicians shall be sufficient * * * *"

Those and only those persons ennumerated in said section are exempt from road duty in counties where same is required, and the certificate of exemption must be obtained in accordance therewith.

Biennial Report of Attorney General, 1926-28, p. 320.

World War Veterans, by virtue of that fact alone, are not exempt from road duty; and Boards of Revenue or Courts of County Commissioners are not authorized to pass a resolution creating such an exemption.

Biennial Report of Attorney General, 1926-28, p. 697.

A war veteran who is physically incapacitated from performing hard labor and who has a certificate of exemption issued in accordance with above cited section would be exempted from road duty; but the mere fact that a veteran receives government compensation under the Disability Veterans' Act would not, of itself, entitle him to said exemption.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 26, 1931

Hon. Price Williams,
Judge of Probate, Mobile County,
Mobile, Alabama.

License for certain named Schedules due only in incorporated places.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of August 6th in which you state:

"Pressing Clubs.

"Your ruling in the above matter, among other things, was to the effect that a person, corporation, etc., was not due to pay a license outside of incorporated towns and cities, and that the words towns and cities meant incorporated places.

Section 12 of the Revenue Code—Auctioneers,
Section 19 of the Revenue Code—Bicycles,
Section 33 of the Revenue Code—Cigars,
Section 38 of the Revenue Code—Coal and Coke,
Section 63 of the Revenue Code—Entertainments,
Section 145 of the Revenue Code—Public Hall,
Section 154 of the Revenue Code—Restaurants,

have a similar wording to that of Pressing Clubs.

"Kindly advise if your ruling is that all of the above, outside of incorporated towns and cities do not have to pay a license."

In reply thereto I beg to advise you as follows:

A license is not required for auctioneers doing business outside of incorporated towns or cities. I call to your attention however, that a license for itinerant auctioneers is provided for by this Section.

Section 19 of the Revenue Code (bicycles) does not require license outside of incorporated towns or cities. The same applies in my opinion to Section 33 (cigars); Section 38 (coal and coke dealers); Section 63 (entertainment); Section 145 (public halls); Section 154 (restaurants).

From the language of these various Sections it appears that the license only applies to incorporated places.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 28, 1931

Mrs. A. M. Tunstall, Director.
State Child Welfare Department,
CAPITOL.

Acts—general—Act approved September 26, 1923 (General Acts, 1923, p. 389).

Child Welfare—County Board—Chairman of.

Opinion by Assistant Attorney General McCall.

Dear Madam:

I have your letter of August 3, 1931. You refer to Section 1, Act approved September 26, 1923 (General Acts 1923, p. 389) which reads in part as follows:

"The judge of the juvenile court of any county having exclusive jurisdiction of dependent, neglected and delinquent children shall, whenever the court of county commissioners or board of revenue of the county shall by resolution declare that a county board of child welfare should be established in said county and shall designate one of its members to serve as a member of such county board of child welfare, and whenever, the county board of education shall by resolution declare that a county board of child welfare should be established in said county, appoint three citizens, two of whom shall be women, who together with the judge of the juvenile court, the chairman of the county board of education, the county superintendent of education, and the member designated by the court of county commissioners or board of revenue of the county, shall constitute the county board of child welfare."

You request my opinion:

Will you please advise me if the probate judge is always chairman of the county board of child welfare or if the judge of the county inferior court becomes chairman when juvenile jurisdiction has been transferred from the probate court to the inferior court?

Answering your question will state that being Judge of the Juvenile Court is merely an ex officio duty imposed on the Probate Judge, wherever it is imposed upon him. Wherever that duty is taken away from him and imposed on another, then such **other** person is chairman of the county board of child welfare.

Your attention is invited to Act No. 530 (S. 561—Hooten) approved July 22, 1931, in this connection. Sections 1 and 2 of that Act are as follows:

"Section 1. That the jurisdiction of juvenile courts in all counties of this state having a population of thirty-five thousand or less according to the last or any subsequent Federal Census be and the same is hereby transferred to and vested in **county inferior courts,** and the judge thereof, which now are, have been, or may hereafter be, established in any such counties.

"Section 2. All such county inferior courts shall have exclusive jurisdiction under this Act, and no other court in such counties shall have jurisdiction in such matter."

The foregoing is an instance where the judge of the **county** inferior court would be chairman of the county board of child welfare.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 1, 1931

Hon. John Brandon,
State Auditor,
CAPITOL.

Act approved July 23, 1931, empowers county governing body with exclusive authority to fix the amount of the official bond of all county officers; Act is not retroactive in effect, and bonds made before the passage of the new law are not affected by the new law; the official bond of county officers must be made by a surety company authorized to do business in the State of Alabama; Sections 3046-3038-9573-2605-2604-2660-2669-2670-2671-2672 and 2673 of Code of 1923 repealed only to the extent set out in this opinion.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I beg to acknowledge receipt of your letter of August 6th, as follows:

On July 23, 1931 the Governor approved an Act which reads as follows, to-wit:

'AN ACT

'To empower Boards of Revenue, Courts of County Commissioners, or like governing bodies, to fix the amount of official bonds of all County Officials and all County employees who are intrusted with the handling of public funds and to provide for the payment of the premiums of said Bonds.'

(Copy of said Act attached)

" 'Does this Act repeal the following Sections?

'Section 3046 of the 1923 Code, page 1340, Volume 1, which requires the State Auditor to fix the amount of the bond for Tax Collectors.

'Section 3038 of the 1923 Code, page 1338, Volume 1, which requires the Tax Assessor to file a copy of his bond with the State Auditor.

'Section 9573, page 523, Vol. 4 of the 1923 Code, which requires the State Auditor to fix the amount of the bond for the Probate Judge.

'Section 2605 of the 1923 Code, page 1222, which relates to filing the Bonds.

'Section 2604 of 1923 Code, page 1221, which states the Auditor must approve the Bond of the Probate Judge.

'Section 2660 of the 1923 Code, page 1238, which relates to additional bonds.

'Sections 2669-2670-2671-2672 and 2673 of the 1923 Code, pages 1240 and 1241, which permits freeholders to petition to have bond declared insufficient.' "

The new law and the several sections mentioned in your letter have been examined.

In your letter you inquire particularly about Section 1 of the new law. Section 1 provides:

"Section 1. That the Boards of Revenue, the Courts of County Commissioners, or like governing bodies of all Counties in the State be and they are hereby empowered with the exclusive authority to fix each year the amount of the Official Bond of all County Officers in their respective Counties whose official bond is now required by law to be fixed or approved by any other authority. Provided, however, that all official bonds shall be made by a surety company authorized to do business in the State of Alabama."

This section provides that the county governing bodies of all counties are empowered with the exclusive authority to fix the amount of the official bond of all county officers. I am of the opinion that the eleven sections mentioned in your letter are affected only to the extent that the county governing bodies, as regards official bonds made after the approval of the new law, are given the exclusive authority to fix each year the amount of the official bond of all county officers whose official bonds are now required by law to be fixed or approved by any other authority. The official bonds of all county officers must be made by a surety company authorized to do business in the State of Alabama. The new law does not destroy, alter or repeal the authority of those officials now authorized or directed by law to approve the official bonds of county officers. The intent to repeal must be clearly expressed. Repeal by implication is not favored. I am of the opinion that the new law has no retroactive effect. Official bonds of county officers made before the passage of the new law are governed by the law as it existed at the time the bonds were made, and are not affected by the new law.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 1, 1931

Hon. Amzi G. Barber,
State Aviation Commission,
Birmingham, Alabama.

State Aviation Commission—Fees and permits (House Bill 171, 1931).

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of August 21, 1931 in which you inquire as follows:

> If the State Aviation Commission issues pilot permits and aircraft permits for the unexpired portion of the fiscal year ending October 30, 1931, is it proper to collect the pro rata part of the unexpired portion of the fiscal year or should full year fees be collected.

I am of the opinion that the full year permit fees should be collected in all cases.

Section 4 of an act approved July 31, 1931, (House Bill 171, Barber) provides for Airman Registration and Permit. Section 5 of said act provides as follows:

> Section 5 FEES AND PERMITS. Every permit issued by the Commission under this Act shall expire upon the 30th day of October succeeding its issuance. For each pilot's permit issued the Commission shall charge and collect a fee of $2.00 and for each aircraft permit issued the Commission shall charge and collect a fee of $3.00.

Since there is no provision for the payment of part of said permit fees or for the proration of same, it is my opinion that the full amount of the fees be collected for each fiscal year, regardless of the time the permits are issued.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 1, 1931

Hon. Wm. F. Feagin, Director,
Board of Administration,
CAPITOL.

1. Guard fee under Section 3741, Code of Alabama 1923.

2. Solicitor's fee; conviction for having a pistol on premises not his own.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of August 13, 1931, in which you state:

"A defendant is arrested, placed in jail and later makes bond. Such case being called for trial such defendant is absent, conditional forfeiture is entered, and alias warrant is issued. The Sheriff re-arrests such defendant in the same case and puts him in jail.

"Under the above statement of facts I wish to be advised as follows:

"1. Would it be proper to charge one guard fee of $2.00 or two guard fees, making a total of $4.00. This is one prisoner lawfully committed to jail two times in one case.

"2. Will you also please advise what is the proper Solicitor's fee to be taxed in a case where the offense is 'having gun on premises not his own.' "

Answering your first inquiry, I am enclosing you copy of an opinion of this office dated February 21, 1929 which, I think, answers your inquiry fully.—Biennial Report Attorney General, 1928-30, p. 194.

Answering your second inquiry will say the offense you refer to comes under Section 3446 Code of Alabama, 1923, and I find there is no fee directly provided in cases of this character. Therefore, we must look to the general provisions of the law which pertain. We find that under Section 3738, Code of Alabama, 1923, which Section fixed and regulates Solicitor's fees, the following provisions:

"For each conviction of a misdemeanor, not otherwise provided for $10.00

Therefore, this being a misdemeanor and not otherwise provided for the Solicitor's fee would be $10.00.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 1, 1931

Mrs. A. M. Tunstall, Director,
State Child Welfare Department,
CAPITOL.

Child labor—as messengers performing certain work for certain concerns.

Opinion by Assistant Attorney General McCall.

Dear Madam:

I have your letter of August 5, 1931 calling attention to Section 3497, Code of Alabama, 1923.

You request my opinion.

"Are messenger boys under 18 years of age employed by stores other than telegraph, telephone, or messenger service companies prohibited from working after the hour of 10 o'clock in the morning?

"Does the term "messenger service" as used in Section 3497 cover drug stores and grocery stores delivering goods?"

I am of the opinion that Section 3497, being criminal in nature when considered in the light of the other provisions of the law, is not intended to apply to other than telegraph, telephone and messenger service companies. Of course, if the minor is under 16 years of age he is governed by Section 3495, Code, supra. This answers your first question.

Answering your second question will say no. The expression "in the distribution, transportation or delivery of goods or messages" refers to the character of work the **minor performs for** the telegraph, telephone or messenger service company.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 3, 1931

Hon. Massey Edgar,
Representative,
Chatom, Washington Co., Ala.

Stock Law Elections—how held.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of August 11, 1931. You request my opinion.

"1. Under Sections 10207, 10208 and 10222, Code of Alabama 1923, has a county the right to call for a county-wide stock law election or a county-wide stock-law election applicable only to certain kinds of stock?

"2. Where a county has held an election in all the precincts of the county and a total of the votes over the county was in favor of a partial stock law, may a precinct by petition of 25% of the bona fide free holders residing in such precinct file a petition with the Commissioners Court that they desire an election in such precinct to vote out from under the stock law?

Answering your first question will state the only way under the general law to call for an election is **by precincts** as prescribed by Sec. 10208, Code. The votes must be by precincts. Each such election is separate and distinct though same may be held on the same day. There is no provision for calling an election in the county as a unit. The stock law may of course, become county-wide by virtue of all the precincts voting independently for such at the same or different times. The petition for an election has been held, and the law is in force, no other election may be held in that precinct except according to the time prescribed by statute (Section 10214). The fact that a precinct has voted a stock law does not prevent it from later independently voting to do away with it. This is done by petition as provided by Section 10208, Code.

Section 10222 evidently has no application except "where an election has been held in the county **as a whole.**" The holding of an election in the county **as a whole** is not provided for by Chapter 345, Code. The section must therefore, have reference to elections held under local laws providing for county-wide elections.

The foregoing answers both of your questions.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 9, 1931

State Tax Commission,
CAPITOL.

Schedule 127, Section 361, Acts 1919, p. 281 levying license on bottling plants does not provide for half year license.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of August 29th in which you state:

"The license on bottlers of soft drinks, Schedule 127, Section 361, Acts of 1915, is exactly the same as in the Acts of 1919 insofar as levying a license on each machine 'operated at any time during the license year'. Your office rendered an opinion, published in your Biennial Report, 1918-1920, page 209, to the effect that under this schedule a half year license could not be allowed because of the words 'operated at any time during the license year'.

"The question has been raised whether these words do operate to prevent the issuance of a half year license. An attorney for a taxpayer has written us claiming that the words mean no more than that a license should be charged for each machine operated, but that it would be a half year or full year license, according to the time for which or at which the machine was operated. This attorney cites the case of Warrior Water Company v. Long, 218 Ala. Rep. 125. In the schedule levying a license in this case, the words are that 'in no event shall the license for the first year's business be less than $100.00', and in this case the Court held that when the business was begun after April 1st, the license should be $50.00.

"In view of this opinion of the Supreme Court and at the request of the attorney mentioned, we are again submitting this schedule for an opinion and we request that you advise us whether in your opinion a half year license could be allowed under Schedule 127, Acts 1919, relating to bottlers of soft drinks."

I have carefully read the opinion of the Supreme Court in the case of Warrior Water Company v. Long, 218 Ala. 125, which you cite. While this decision is somewhat persuasive of the interpretation placed on it by the attorney for the bottling company, yet I am of the opinion that the language of Schedule 127, Section 361, Acts 1919, p. 282, levying a license on bottlers, is such that said decision cannot apply, and the opinion to which you refer, being in Biennial Report of Attorney General, 1918-20, p. 209, is correct. The following language is used in Schedule 127 in each of the subdivisions:

"Operated at any time during the license year."

This indicates clearly, in my opinion, that regardless of what time a bottling plant is operated or when begun, it is liable for the full license provided in the Schedule.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 9, 1931

Hon. Bradford Cooper,
Treasurer Marion County,
Hamilton, Alabama.

1. Statute limitations—claims of officers and witnesses to be paid out of Fine and Forfeiture Fund.

2. County Court—fees of sheriff for attendance.

3. Jailers acting as bailiffs.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of July 8, 1931, in which you request an opinion of this office on the following matters:

1. You ask whether or not the claims of officers of the court and witness, payable out of the Fine and Forfeiture Fund, are barred by statute limitation.

2. You ask also whether or not the sheriff is entitled to $2.00 per day for attendance upon County Court and if so, how is said claim paid.

3. You ask whether or not a jailer who is on a salary of $2.00 per day, paid by the county can also be paid $3.00 per day as bailiff. Can he elect between the $2.00 per day paid as a jailer and the $3.00 per day as bailiff.

1. Section 3763, Code of Alabama 1923, is as follows:

"3763. The fees of witnesses, subpoenaed on the part of the State to appear before the Grand Jury or before any court in which a criminal prosecution is pending, must be taxed against the defendant, if he is convicted, or against the prosecutor when the costs are imposed on the prosecutor or if the indictment is withdrawn or filed or the prosecution abated by the death of the defendant, or if the costs are imposed on either the defendant or the prosecutor, and on execution returned against him for the same is returned "no property found" or if no indictment is returned by the grand jury before whom the witnesses appear, or if a nolle proseque is intend in the case, such fees must be paid by the county in the manner specified in Section 3769."

which is as follows:

"3769. It is the duty of the clerk of the court to issue a certificate to each witness appearing on the part of the state, stating the

amount of compensation to which he is entitled, the facts under the provision of Section 3763 make it a good claim against the county which certificate is payable by the treasurer out of any fines and forfeitures in the county treasury; the clerk who issues the certificate hereinabove mentioned shall not be entitled to demand or charge any fee for performing this duty."

Thus we see that in a case where the defendant is convicted or the costs imposed upon the prosecutor, before the witness fees can become a claim against the fine and forfeiture fund, an execution against him must be returned "no property found" and under these circumstances the judgment will be presumed satisfied within ten years and the burden of proving it is not satisfied is upon the claimant, Section 7871, Code of Alabama, 1923. Under Section 8942, Code of Alabama, 1923, the claim is definitely barred. This being true, the witness certificates must be presented while the judgment is in force as the certificates merged into the judgment.—Henry vs. State ex rel Rainbow, 81 So. 190.

However in cases where the indictment was withdrawn and filed on the prosecution abated by the death of the defendant, or where no indictment was returned by the grand jury before which the witnesses appeared, or if a nolle proseque is entered, I am of the opinion that there is no limitations upon the time in which such certificates can be presented.

This opinion amplifies to a certain degree a recent opinion rendered by this office to Hon. E. L. McConnell, Circuit Clerk of Lauderdale County, wherein it was held that there was no limitation in any case.—Opinions Attorney General, 1922-24, page 110.

The same rule applies to the fees of officers. Where the costs are imposed on the defendant or prosecutor they merge into the judgment and must be filed before the judgment is satisfied.

2. In answer to your second question, it is my opinion that the sheriff is entitled to a fee of $2.00 per day for attendance upon County Court as authorized by Section 3758, Code of Alabama, 1923. This claim is paid in the same manner as other costs in criminal cases. It is taxed against the defendant upon conviction and upon prosecutor in certain instances in accordance with Section 3833, Code of Alabama, 1923, in other cases out of fine and forfeiture fund.—Opinions Attorney General, 1922-24, page 434.

3. In regard to your third inquiry, I am unaware of any law providing for the payment of the jailer by the county. Assuming that you have in mind the night watchman as provided for in Section 4879, Code of Alabama, 1923, it is my opinion that he cannot be on the payroll of the county as watchman and at the same time receive a fee for acting as bailiff.

Section 280, Constitution of 1901, is as follows:

"280. No person holding an office of profit under the United States, except postmasters, whose annual salaries do not exceed two hundred dollars, shall during his continuance in such office, hold any office of profit under this state; nor unless otherwise provided in this constitution, shall any person hold two offices of profit at one and the same time under this state, except Justices of the Peace, notaries public, and commissioners of deeds."

In the case of Ward et al vs. State ex rel Goldsmith, 203 Ala. 306, 82 So. 662, it was held that a deputy sheriff paid by the sheriff, and receiving no compensation from the public funds as such deputy sheriff could also serve as bailiff as he was not holding two offices of profit. "Of course, to a certain intent and purpose a deputy sheriff is an officer within certain provisions of the law, such as resisting an 'officer' but he is not such an officer as is dealt with by section 280 of the constitution, **unless perhaps, he be a deputy in Montgomery or such other counties as compensate the deputy sheriff.**"

In other words, if a jail watchman paid by the county and a bailiff are "offices of profit" then one man cannot serve in both capacities. However if either of them cannot be determined to be an "office of profit" then I know of no provision of law forbidding the holding of the two places by the same man.

"Offices are classified with reference to compensation as offices of profit and honorary offices. An office of profit or a lucrative office, is one to which is attached a compensation for service rendered. An honorary office is one to which are attached no fees, perquisites, profits or salary."

Under this definition I cannot hold that the watchman paid a salary by the county can also receive compensation as a bailiff. If he accepts the place as bailiff he vacates the office of watchman.

4. I am unable to determine from your letter what information you desire in your fourth question which is in regard to bastardy cases. If you will write me again making your inquiry more explicit, I will see that you get a prompt reply.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 9, 1931

The State Tax Commission,
CAPITOL.

Provisions of Act No. 263, H. B. 120—Stokes—approved June 13, 1931, providing for the issuance of motor vehicle licenses on graduated

quarterly basis, held to apply to all motor vehicles, and not merely to those "purchased" within periods named therein.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of August 24, 1931, in which you state:

"Sections 1 and 5 of H. B. 120, approved June 13, 1931, provides as follows:

"Section 1. That the registration or license tax which may now or hereafter be required to be paid on automobiles, automobile truck or other motor vehicles shall be graduated on an annual, semi-annual and quarterly basis, that is, if the motor vehicle is purchased during the period between October first and December thirty-first of any tax or license year, the registration of license tax shall be for the full tax year, if purchased during the period between January first and April first of any tax year, the registration or license tax shall be for three-fourths of the annual registration or license tax, if the motor vehicle is purchased during the period between April first and July first of any tax year, the registration or license tax shall be one-half of the annual registration or license tax, if the motor vehicle is purchased during the period between July first and October first of any tax or license year the registration or license tax shall be one-fourth of the annual registration or license tax.

"Section 5. That all laws and parts of laws in conflict herewith are hereby expressly repealed.

"Please give us your opinion on the following questions.

"Do the provisions of Section 1, of this Act apply only to motor vehicles purchased between the dates mentioned or could a person who should elect not to use his automobile, bought before October 1, 1931, on the highways of Alabama, until after January 1, 1932, take out license and pay registration or license tax for three-fourths of the annual registration or license tax; or if he should not use his automobile until after April 1, take out license and pay the license tax for half-year; or if he should not use his automobile until July 1, could he take out license for one-fourth year?

"As this Act repeals all laws and parts of laws in conflict herewith, can a man, who purchases an automobile before October 1, 1931, take out a half-year license if he does not use his automobile until after April 1, 1932?"

In answer to your inquiry I advise that it is my opinion that the provisions of the Act, above quoted, apply to all motor vehicles and not merely those purchased during one of the periods named in the Act.

The license tax required for which the tag is evidence of payment, is for the privilege of using the public roads, and heretofore it has been uniformly held that so long as a motor vehicle was not used on the public roads no license tax accrues. To attempt to give a rigid interpretation to the word "purchase" as used in Act, would in effect make ownership the test of liability for the license tax, rather than the use of the roads, possibly making the tax a property tax. Further to give a hard and fast interpretation to the word "purchase" as used in the Act, might affect the liability for license of motor vehicles already owned or which **may be** purchased during the current year and which would merely be owned during the following year.

Patently this is not the intent of the Act.

Reading the Act in conjunction with the law as previously existing, and keeping in mind the privilege for which license is required, to-wit: the use of the public roads, I am of the opinion that the provisions of said Act apply to all motor vehicles and not merely to those "purchased." Hence if a person does not use his motor vehicle until after April 1, 1932, he is liable only for half year license.

THOMAS E. KNIGHT, JR.,
Yours truly,
Attorney General.

September 9, 1931

Hon. Chas. W. Weaver,
Clerk of Circuit Court,
Brewton, Escambia County, Ala.

Disposition of costs and fine on an appeal from the recorder's court to the Circuit Court on conviction.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of July 24, 1931, in which you request my opinion as follows:

"(1) Where a defendant is convicted in City Court, takes an appeal to the Circuit Court and is convicted again and fined, should the defendant be placed in jail, just as if he had been tried on a State charge, or should execution be issued against the sureties on his appeal bond from City Court for the amount of the judgment and costs? Can the defendant be sentenced to hard labor to pay the fine and costs if case appealed from City Court to Circuit Court and defendant is again convicted?

"(2) Can a forfeiture be taken against an appeal bond from City Court to Circuit Court and Defendant be arrested and placed in jail on an alias? Or if defendant fails to appear when he appeals case from City Court to Circuit Court should the appeal be dismissed and the defendant remanded to City Court, or should the appeal be dismissed and the sureties on his appeal bond be forced by execution to pay the fine and costs of lower court together with the accrued costs of the Circuit Court?

"(3) What should be the style of a case appealed from City Court to Circuit Court? Should it be The City v. John Doe? or John Doe, Appellant v. The City, Appellee?

"(4) Can the defendant take appeal from the Circuit Court to Court of Appeals or Supreme Court after he has been convicted in City Court and then convicted in Circuit Court?

"(5) Is there any such thing as a confession of judgment when defendant is convicted in Circuit Court on appeal from City Court?

In answering your inquiries I am presuming that the defendant was tried before the mayor or recorder of the municipality for violation of a city ordinance, and not for violation of a State law.

Answering your first inquiry, will say that cases of this character are disposed of in the circuit court as provided for under Section 1938, Code of Alabama, 1923. It is my opinion that the circuit court, under Section 1938, supra, has no authority to commit the defendant to the county jail, but it would be its duty, provided the fine is not presently paid or judgment confessed, to remand the defendant to the city authorities for punishment, and it becomes the clerk's duty to notify in writing the mayor or chief of police of the municipality of the judgment of the court trying the case, and said notice shall accompany the defendant when he is delivered to the city authorities for punishment. However, if the fine and costs are paid then it becomes the duty of the circuit clerk to receive such fine and costs, and the defendant may be discharged, and it is his duty to pay the money to the treasurer of the city within thirty days, and failing to do so he is penalized five per cent per month for such failure.

Biennial Report 1928-30, p. 177.

Where the defendant is convicted in the circuit court on an appeal from a recorder's court, and is charged with violating a city ordinance, there is no authority of law for sentencing the defendant to hard labor for the county to pay such fine and costs, but as stated above, it must be referred back to the mayor or the municipal authorities for further carrying out the provisions of the judgment.

Answering your second inquiry, will say if the defendant fails to appear, where he has taken an appeal from recorder's court to the circuit

court charged with violating a city ordinance, a forfeiture may be taken in the circuit court as provided by Section 1938, supra. The case should not be dismissed but should proceed as other criminal cases.

Answering your third inquiry, will say that the style of the case should be The City of ..... v. John Doe. The case is tried **de novo.**

My answer to the fourth inquiry is in the affirmative.

See Section 943, Code of Alabama, 1923, 4th App. 226-292.

My answer to your fifth inquiry is in the affirmative.

See Section 1938, supra.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 9, 1931

Hon. U. G. Davis, Chairman,
Commissioners Court,
Coosaville, DeKalb Co., Alabama.

Counties—Transfers from general fund to special fund—when allowable.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of August 24, 1931, requesting that I advise you whether or not the commissioners court has authority to order transfers of any money from the county general fund to a special road fund.

In answer I call attention to Section 1351, Code of Alabama 1923, as reenacted in the Alabama Highway Code, 1927.

Under said law, the commissioners court is authorized to transfer to a road fund money from the general fund only where there is a **surplus** of such general fund.

It must affirmatively appear of record that there is a **surplus** in the general fund before any such transfer can be made from the general fund to the road fund.—**Mims. Treas. vs. Stallworth,** 180 Ala. 511; 61 So. 811.

There cannot be said to be a surplus in the general fund until all preferred claims against the county, and all appropriations which the law

makes mandatory, **have been paid,** or adequate funds sufficient to meet all preferred claims and all such appropriations which are mandatory **and then if after this has been done,** a surplus remains the court of county commissioners may lawfully transfer any such surplus to the road fund to be used as provided in said Code section.

There must be strict compliance with the foregoing or else no such transfer is lawful.—**Rhodes vs. Morengo Co. Bank,** 205 Ala. 667; 88 So. 850.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 12, 1931

Hon. C. W. Gantt,
Circuit Clerk, ex-officio Clerk County Court,
Wetumpka, Elmore County, Alabama.

Solicitors fees—Surplus where paid by State and County—Construction 3669, Code.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of April 9, 1931. You call attention to Section 3669, Code of Alabama, 1923, and request my opinion:

1st. May the county treasurer pay into the Fine and Forfeiture fund any and all surplus money arising from the County Solicitor's fees in the county court after said solicitor has been paid the amounts allowed him by law?

2nd. If so, and this has not been done by said Treasurer in the past, for how many years in arrears may this surplusage be transferred to said Fine and Forfeiture Fund?

Your first question is answered in the affirmative.

Circuit solicitors are paid a salary wholly by the State execpt in certain circuits where salaries are part paid by county.

Section 5510, Code.

The Solicitor's fee of solicitors paid a salary by the State "belonging to the State, and, when collected, must be paid into the State Treasury."

Section 5511, Code.

The circuit solicitor appoints a deputy solicitor for each county of his circuit, except as otherwise provided by law.

Section 5522, Code.

Such deputies are paid **salaries** by the **counties** "in lieu of all fees or compensation allowed by law" except in certain counties mentioned in the statute.

Sec. 5523, Code, as amended by Act 1927, p. 513.
See also Secs. 5524, 5525, 5526, 5527, 5528.

The law prescribes certain solicitors' fees taxable against defendants' on conviction, collectable as other costs any payable into the State or county treasury as may be authorized or required by law.

Sec. 3738, Code.

Such fees earned in the Circuit Court are reported quarterly to the State Auditor by the Circuit Clerk and paid over to the **State Treasurer.**

Sec. 5518, 5516, 5517, Code.

Except as provided as to solicitors' five per cent commissions on fines and forfeitures which are payable into the fine and forfeiture fund of the county.

Sec. 5515, 3738 (next to last schedule)

On convictions of misdemeanors in county or inferior courts solicitors' fees taxed there are **"paid into the county treasury"** whether judgment be paid in the county court or on appeal to the circuit court.

Sec. 3759, Code; See also Sec. 3739.

Fees taxed for services of solicitors in prosecutions before county court "belong to the county and shall be paid when collected into the county treasury."

Sec. 3758, Code.

There is a provision in the Code requiring solicitors' fees in county and inferior courts to be paid into the county treasury and be "placed in the solicitors' fund of such county by the treasurer of said county."

Sec. 5512.

However it has been held that this Section, insofar as it applies to creation of a "solicitor's fund" in counties other than Jefferson County is meaningless and of no operation.

Opinions, Attorney General 1928-30, p. 458 et 461. As to history of Sections 3759 and 5518, supra, see Opinions Attorney General 1928-30, p. 461, second paragraph. The **Fine and Forfeiture** Fund of a county consists of all fines and forfeitures in the county in which the indictment was found, or the prosecution commenced, "unless otherwise expressly provided," and the five per cent commission of solicitors on fines and forfeitures.

Secs. 4038, 5515, 3738, Code.
Ryan v. Collins, 196 Ala. 478, 71 So. 690.
Other cases cited under Sec. 4038, Michies Code 1928.
Section 3669, Code of Alabama, 1923 provides as follows:

"The surplus money paid into the state and county treasury arising from the solicitor's fees **after** the solicitors and their assistants have respectively been paid the amounts allowed them by law, shall be paid into the **fine and forfeiture** fund of the **respective** counties **in direct proportion** to the amount received from the convictions respectively."

The statute last above quoted was a part of Section 1 of an Act approved February 15, 1897 (Acts 1896-97, p. 1532) and as the proviso was originally enacted, was doubtless unconstitutional because the title to the bill did not contain reference to it, but its subsequent codification in the Codes of 1907 and 1923, cured this defect. It is also later in point of enactment than Sec. 5511, Code of Ala. 1923, which was a part of an Act approved February 28, 1887 (Acts 1887, Vol. 2, p. 161). Therefore even if it be said there is a conflict between these two Sections, which is doubtful, then Section 3669, supra, will prevail.

The language of Section 3669 is clear and unmistakable. It is the duty of the County Treasurer to pay the fees into the fine and forfeiture fund of the county in accord with this section. It is, likewise, the duty of the State to return to the respective counties and surplus solicitors' fees paid into the State Treasury, in accord with Section 3669.

Answering your second question, the books should be adjusted as far back as any error occurred.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 12, 1931

Hon. Seth P. Storrs,
Commissioner, Agriculture & Industries,
Montgomery, Alabama.

Ginner's lien not preserved by notation of fee for ginning placed on warehouseman's receipt for cotton; lien of ginner is lost when cot-

ton leaves possession of ginner with ginner's consent; as between warehouseman and landlord, the lien of the landlord is superior, unless the warehouseman is a purchaser for value and without notice; bond of warehouseman would not be liable for payment of ginner's lien.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I beg to acknowledge receipt of your letter of August 27, 1931, as follows:

"It has been the general custom in the past for ginning charges to be either paid in cash or deducted from the cotton seed. At the present time cotton seed are so cheap that they are bringing on an average of about $1.50 per bale in excess of the charge for ginning. In many sections of the State farmers have adopted the plan of taking all of the cotton seed money to live on and allowing the ginning charges to follow the bale of cotton into the warehouse, and setting out on the warehouse receipt the amount of ginning charges against the bale. We are having considerable inquiry and the following questions are raised on which I would appreciate your opinion:

1. The warehouseman being under bond, if he accepts the cotton and agrees to collect the ginning for the ginner's account when the cotton is moved, would the ginner be protected under the warehouseman's bond for the faithful performance of collecting ginning charges and paying them to the ginner?

2. It is my understanding of the law that the ginner has a prior lien on a bale of cotton for the ginning charges so long as the cotton remains in his possession. If he allows the cotton to pass from his possession without payment of ginning charges he simply has an account against the farmer. If this construction of the law is correct, then the question is raised that after the bale of cotton passes from the ginner's possession the prior lien is cancelled. When the bale of cotton reaches the warehouse for storage the landlord or mortgagee has the first claim. Would the owner of the cotton have a right to re-establish a prior lien for ginning by placing the charges on the warehouse receipt without the consent of the landlord or mortgagee? Would it be necessary for the farmer to secure written permission from the landlord or mortgagee to place the ginning charges on the receipt as a prior lien and, if necessary to secure such written consent, would it not be necessary to have the consent written on the receipt itself and signed by the landlord or mortgagee on the receipt to make the placing of the ginning lien legal?

Enclosed I am handing you copy of warehouseman's bond, warehouse receipt and Rules and Regulations governing warehouses passed

by the Board of Agriculture and call your attention to Sections Nine and Ten."

I have examined the warehouseman's receipt, the warehouseman's bond and regulations governing the operation of public warehouses in Alabama.

In answer to your two questions: Section 8914 of Vol. 4 of the Civil Code of Alabama of 1923, provides a lien in favor of the ginner upon all cotton ginned and baled.

Section 8799 of Vol. 4 of the Civil Code of 1923, provides a lien in favor of the landlord for rent of farm lands and advances.

Section 436 of the Uniform Warehouse Receipt Law, found in the Agriculture Code of 1927, provides a lien for the warehouseman.

The lien of the ginner is preserved and exists only so long as the cotton ginned and baled remains at the gin or in the possession of the owner of the gin. When the ginner releases the cotton to the warehouse, the ginner's lien no longer exists, unless the cotton is still in the possession of the owner of the gin when it is deposited in the warehouse. If the owner of the gin is also the owner of the warehouse, the ginner's lien would be preserved because the cotton in the warehouse would still be in the possession of the ginner. In my judgment, the issuance of a receipt by the warehouseman to the owner of the cotton, with a notice on the receipt that the ginning fee has not been paid, would not preserve the lien of the ginner. Moreover, it is very doubtful whether such a notice on the receipt would obligate the warehouseman to the ginner in any way as regards the collection of the ginner's fee for ginning. Such a notation on the receipt would merely give notice to the warehouseman and to all subsequent holders of the receipt that the ginning fee had not been paid. Neither the regulations governing the operation of public warehouses nor the bond executed by the warehouseman would preserve the lien of the ginner. The warehouseman's bond would not be responsible to the ginner for payment of the ginner's fee. The warehouseman is authorized to surrender the receipt upon payment by the lawful holder of the receipt of all charges and liabilities which may be due the warehouseman. The blank spaces in the lower left-hand corner of the receipt are placed on the receipt for the convenience of the warehouseman and the owner of the cotton, and also for the purpose of carrying out the provisions of Section 439 of the Agriculture Code of 1927, on the subject of the negotiability of such receipts.

After the cotton has left the warehouse, no agreement between the landlord or mortgagee on the one hand and the owner of the cotton on the other hand could revive or preserve the lien of the ginner. The ginner's lien is lost when the cotton is taken from the possession of the ginner with the ginner's knowledge. Liens are created and established by law and not by agreements between individuals. The lien of the ginner having been destroyed, there would remain the lien of the landlord and the lien of the warehouseman. The lien of the landlord would be paramount to

the lien of the warehouseman, unless the warehouseman was a purchaser for value, without notice, or knowledge of facts calculated to put him on notice of the existence of the landlord's lien.

In your letter you refer to Sections 9 and 10 or regulations governing the operation of public warehouses.

The warehouseman would comply with the provisions of the bond, construed in connection with the regulations, by placing on the receipt the several things mentioned in Sections 9 and 10 of the regulations. When the warehouseman has complied with Sections 9 and 10 by placing on the receipt the matters and things mentioned in the two sections, he has fulfilled the obligations of the bond in this respect, and has also protected himself against innocent purchasers for value and without notice. You will note that Section 439, referred to above provides that if a negotiable receipt is issued, the warehouseman shall not have a lien on the goods deposited, except for charges for storage of those goods subsequent to the date of the receipt, unless the receipt expressly enumerates other charges for which a lien is claimed. If such other charges for which a lien is claimed are expressly enumerated, the lien of the warehouseman is fully protected, and all persons holding the receipt would hold with notice of the various charges claimed.

There can be a lien, however, only for such charges enumerated in Section 436, viz., all lawful charges for storage, and preservation of the goods, all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, coopering and other charges and expenses in relation to such goods; also for reasonable charges and expenses for notice and advertisement of sale. None of the above include charges for ginning.

The placing of the ginning notice on the receipt serves no purpose that I know of; it does not preserve the ginner's lien (because the ginner's lien has already been destroyed) and it does not obligate the warehouseman to make the collection for the ginner; there would be absolutely no consideration for such an agreement.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 14, 1931

Hon. S. R. Butler,
State Tax Commissioner,
CAPITOL.

Statement of facts given held to constitute business as one "store" and hence liable for only one license under House Bill 111, approved July 7, 1931.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 3rd in which you state:

"Section 8 of House Bill 111, approved July 7, 1931, is as follows:

"'Section 8. The term 'store' as used in this Act shall be construed to mean and include any store or stores, or any mercantile establishment or establishments which are owned, operated, maintained or controlled by the same person, firm, corporation, co-partnership or association, either domestic or foreign, in which goods, wares or merchandise of any kind, are sold, either at retail or wholesale * * * *'"

You ask my opinion on the following:

"1st. When such person conducts his store business in a building which has more than one customer's entrance from the street and the store has dividing walls between its several departments—openings being in these dividing walls through which customers may go from one department to another, that is, from the grocery department to the dry goods department, without having to return to a street entrance and re-enter a different department from a street entrance, all departments of the store being owned or controlled by the same person, the store being conducted as one business, and all departments of the store being under the same roof and adjoining.

"2nd. If a store is conducted as set out above, except as to the opening in the dividing walls between the departments, through which customers may pass, would more than one 'store license' be required under the legislative Act, supra, when a customer would be required, in going from one department to another, to go through the regular customers entrance to the street and re-enter the adjoining departments from the street."

In answer to both of your questions it is my opinion that under the conditions set out by you there is liability for only one license in each case.

Under the facts as given by you there is only one store even though various lines of merchandise are handled and there is more than one street entrance. The business, however, from the facts given by you, is a unit and in my opinion constitutes but one "store." Therefore there is liability for only one license under House Bill 111, approved July 7, 1931.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 15, 1931

Hon. Madison L. Smith,
Tax Assessor of Washington County,
Chatom, Alabama.

Section 18, Acts 1927, page 139, provides exclusive method of assessing motor vehicles for ad valorem purposes.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of August 22nd in which you state:

"Section 20, page 214, of Revenue Laws 1929, states a taxpayer must return such motor vehicle for ad valorem taxes in the county in which he resides.

"I want to know if a tax assessor has the right to assess a motor vehicle for any person living on or near the line of another county.

"Has a tax assessor a right to assess a motor vehicle to traveling salesmen that has headquarters in another county and is traveling over the State?

"Has a tax assessor a right to refuse to assess a trailer where the taxpayer lives in another county and has bought a tag for his motor vehicle in the county in which he lives, and gets a citation from the License Inspector of another county other than the one he lives in, the trailer was being used for delivery of musical instruments in adjoining county to his home county, and was cited by the license inspector."

In reply I beg to advise that Subsection C of Section 18, Acts 1927, page 139, being Section 20, page 214, of the Revenue Compilation of 1929, provides:

"After the first day of October, 1923, motor vehicles within the meaning of this Act, shall not be included in any assessment made by any person, firm or corporation as of the first day of October, 1923, or subsequent years; and such motor vehicles shall not be considered as escaped property by reason of failure to include same in any tax return as of the first day of October, 1923, or any subsequent year, but shall be assessed as herein provided."

It is therefore apparent that there is no provision for the assessment of motor vehicles in the way property is ordinarily assessed and that motor vehicles are not assessable until application for tag license is made. It seems to be the law that so long as the motor vehicle is not used on the public roads and no license is required therefor, there is no assessment to be made against it for ad valorem taxation.

Your first question is not exactly clear. The Tax Assessor has the right to assess a motor vehicle if the party assesses the same when he secures his tag license but the Tax Assessor has not the right to assess the property as an escape in the manner in which other property is assessed.

Answering your second question, if the traveling salesman has secured a legal tag it is presumed that the car was duly assessed in the County where the tag was secured and the Tax Assessor has no right to assess the motor vehicle for ad valorem taxes.

Your third question is not at all clear. License for trailer and assessment for ad valorem taxation should be in the same County where license for motor vehicle was secured. If the citation by License Inspector was in another County then license should be secured in the home County and the property there assessed.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 17, 1931

Hon. Bart B. Chamberlain,
Solicitor, Mobile County,
Mobile, Alabama.

Automobiles seized for transporting liquor must be sold in strict accordance with the statute; private sale not authorized.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I beg to acknowledge receipt of your letter of August 24th as follows:

"The Sheriff of this County advises me that several days ago he attempted to sell at public sale under an order of Court, certain automobiles which were seized for transporting liquor and that at such sale there were no bidders. He states in his letter to me that these cars are of but little value, and is asking me whether or not his department has a right to sell such cars to junk dealers and if so as to what disposition should be made of the proceeds of such sale. I have advised him that I know of no provision of law to sell such automobiles at private sale, and that the Law, on the contrary, provides that automobiles of this type should be advertised for sale and sold to the highest bidder. A great many of these automobiles, as you know, are of little or no value and it is very difficult to get enough out of them to pay the costs. I will be pleased to have you advise me whether or

not there is any way by which the Sheriff can dispose of automobiles at private sale, when an attempt has been made to sell the same at a public sale and there are no bidders at said sale. The Sheriff has several of these cars on hand and he is anxious to dispose of them. I would appreciate an answer from you when you can conveniently write me."

In answer to your inquiry, I beg to advise that I know of no way the automobiles may be sold except as provided by Article 11 of the Civil Code of Alabama of 1923, on the subject of: "Forfeiture and Destruction of Contraband Liquors and Other Property." I invite your attention especially to Section 4781. This section provides:

"4781. Sheriff shall advertise and sell property seized or forfeited as contraband.—Any sheriff or other officer who seizes or comes into possession of such vehicle, animal, or property illegally used for the transportation of liquor within or into the state and does not know or cannot ascertain the possessor or owner thereof, shall advertise and sell the same according to the rules for selling personal property under execution, and both the court in condemnation proceedings, and the said officer on advertisement shall sell the right of all interested persons in and to said conveyances, vehicles, and other property, who aided or assisted in the illegal transportation or who had knowledge or notice thereof, or could by reasonable diligence have obtained knowledge or notice thereof."

The automobiles must be sold in the same way that personal property is sold under execution. I know of no provision of law allowing the automobile to be disposed of at private sale. If a junk dealer is the high bidder, then, of course, the automobiles may be sold to him. The proceeds, no matter what the amount, must be disposed of as provided by Article 11.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 17, 1931

Hon. C. E. Ray, Principal,
Hicks Memorial High School,
Autaugaville, Autauga Co., Ala.

Schools—Rural School House Erection, Repairs, and Equipment fund distribution, Acts 350 & 370, 1931 Legislature discussed.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of July 28, 1931 which is as follows:

"The Autaugaville school has $15,000.00 in cash with which to construct a modern brick High School building. We wish to secure $15,000.00 from the State according to the new law in which the State gives $1 for every local dollar in the construction of school buildings.

"Please read House Bill 44 by Holland, and also House Bill 350 by Ware, also read that section of law allowing each county $5,000 per year State money for the construction and repair of school buildings. Also take into consideration the re-distribution fund. Investigate law limiting construction period of State aid school buildings to two years."

You request my opinion.

"Taking all of the above laws into consideration, would it be legal for us to put up our $15,000 and make an immediate contract for $30,000 building, expecting to get $15,000 from the State in time to complete the building? It seems that the new acts referred to above have brought confusion into school construction work and we shall be more than obliged to you if you will figure out how we may put up our $15,000, proceed with the construction work, and be sure to receive our $15,000 from the State."

Preliminary to answering your question, it seems best to review the law on the subject.

The continuing annual appropriations available on October 1st of each year for the erection, repair and equipment of rural schools are set forth in Section 371, School Code of 1927, and Section 6, Act approved August 25, 1927 (Genl. Acts. 1927, p. 442).

Prior to the Acts Nos. 350 and 370, approved July 6, and July 8, 1931, respectively (H. Nos. 44 & 350) the rule of apportionment of that fund mentioned in Sec. 371, supra, was that after setting aside from that annual appropriation a sum sufficient to procure expert assistants in the drawing of plans and specifications in the preparation of estimates of bills of materials, in the inspection of buildings, and for such other expenses incident thereto as are deemed necessary, the State Superintendent of Education should **apportion the remainder of such annual appropriation equally among the several counties of the state.** This takes place on October 1st, the day when the **annual** appropriations become available. (Sec. 371, School Code).

A county has a right to file applications totalling more or less than its annually apportioned share. Some will be more and some less. If by September 1st following, the sum total of applications of a county does not consume its apportioned share, then, on that date such counties must contribute out of their unexpended balances in their apportionments amounts which in total are sufficient to cover the excess State aid asked

for by those counties which prior to that date have consumed their respective annual apportionments.

The rule by which counties having unexpended balances on September 1st contribute to the honoring by the State of those applications of those counties which have by that date exhausted their previously apportioned shares is: if the total amount of unexpended balances on that date is **sufficient** to meet the total amount of excess applications this total amount of unexpended balances shall be used in meeting the total amount of the applications by having each county with an unexpended balance contribute from its balance in the same proportion that the total amount of excess applications bears to the total of the unexpended balances. Under such a situation, of course, all the excess applications would be fully met. For example if A. B. C. and D. counties had unexpended balances of $1,000, $2,000, $3,000, and $4,000, respectively, or a total of $10,000, and the total of excess applications was $7,000, "A" county would contribute $700.00, "B" county $1,400.00, "C" county $2,100.00 and "D" county $2,800.00, making a total of $700.00, and leaving a balance in "A" county of $300.00, in "B" county of $600.00, and in "C" county of $700.00, and in "D" county of $1,200.00, or a total of $3,000.00, which latter sum must on October first, under Section 371, be divided equally among the sixty-seven counties. However, if, as is usually the case, the total amount of unexpended balances on September 1st is not sufficient to meet the total amount of excess applications then on file, the contributions of the counties having unexpended balances would be "pro-rated" among the counties then having excess applications on file. For instance if the total of unexpended balances was $10,000.00 and the total excess applications was $21,000.00 made up of applications in amounts of $1,000, $2,000, $3,000, $4,000, $5,000, and $6,000 for respective counties, the first county would get 1/21 of the $10,000, the second 2/21, the third 3/21, the fourth 4/21, and the fifth 5/21, and the sixth 6/21. This appears to be the way that Section 386 operates.

If on October 1st following there should be any unexpended balance **remaining to the credit of the counties, and/or** any unexpended balance of the amount set aside to procure expert assistants in the drawing of plans and specifications for preparation of estimates of bills of materials for inspection of buildings, and for other necessary incidental expenses, then on that date the composite sum of such balance must be apportioned **equally** among **all** the counties of the state.

Now in order for a County Board of Education to have participated in the annual appropriation provided by Section 371, and the Act of 1927, supra, it was necessary that the application should show that at least twice the amount for which aid was asked had already been secured from other sources than from the state.

(Section 372, School Code)

Article XVIII School Code clearly indicates that the annual State aid appropriation therein provided could not be participated in by a County

Board of Education to secure aid in paying for the erection, repair or equipment of school-houses or buildings which had already been built when aid was applied for. It was intended to operate in future. It contemplated that when aid was applied for thereunder nothing had been done on the proposed project for which aid was being requested. (Sec. 372, supra).

The maximum amount of aid permitted on a project was graduated and defined as shown in Sections 373, 374, 375, 377, and 378, School Code, 1927. In a construction or repair project where certain types of material were specified for use, the amount of aid might be increased to not exceed one hundred per cent over and above the schedule allowances.

(Sec. 379, School Code).

The procedure to secure State aid out of this appropriation, manner of handling the application and other things necessary to be done both before and after cashing of the State aid warrant is set forth in detail in Sections 372, 380, 381, 382, 383, 384, and 385, School Code, supra. The distribution of unexpended initial county apportionments is set forth in Section 386, School Code, supra.

This was the way the law stood as to the annual appropriation of $221,500.00 for State Aid for erection, repair and equipment of rural school-houses as provided in Section 371, prior to the passage of Acts Nos. 350, and 370 of 1931.

At that time and now there was also an additional annual appropriation of $128,500.00 for the rural school-house building fund. As to it the law provided it should be expended in accordance with the law herein above set forth and the provisions of the Act appropriating it. This appropriation is found in Section 6, Act approved August 25, 1927 (Genl. Acts 1927, p. 442). Section 23 of that Act requires that the expenditures of this additional sum "shall be governed by the provisions of the School Code relating to the expenditure of such funds"; with certain provisos. The first is identical with that set forth in Section 379, School Code. There was added a clause that in such an instance the limitations as to the number of rooms should not apply. Evidently the Legislature had in mind the limitations then existing in the general educational laws (for instance see Sec. 309, School Code, 1924) which on the adoption of the School Code 1927, were eliminated from Article XVIII. There is, however, an additional proviso attached to the distribution of this particular annual appropriation **differing from the prerequisites to participation in the appropriation set forth in Sec. 371**, School Code, 1927. It is this:

> "provided further that before State aid is granted for the construction of any such building (Rural school-house) the county board of education shall submit to the State Board of Education for its approval a proposed county-wide building program which sets out in detail the location of all present and proposed buildings, and which

provides both elementary and high school facilities for all the children of the county. In the preparation of such county-wide building program the county board of education may ask assistance of the State Department of Education or of any other agency approved by the State Board of Education that can furnish data on the basis of which the county board of education may act intelligently. Permanent buildings in course of construction at the time of the approval of this Act shall be eligible to share in the proposed increases authorized by this section."

(Sec. 23, Act 1927, supra).

The proviso last quoted does not now and never has applied to the disposition of the annual appropriation set forth in Section 371, School Code, 1927, but applies only to the appropriation set forth in Section 6, Act of 1927, from which it is quoted.

Thus you see now the **complete** status of the law on the subject prior to the passage of the Acts of 1931, which we will now discuss in their relation to the law existing on their passage. These two Acts appear to be the only ones which make any changes in the manner of disposition of rural school house erection, repair and equipment appropriations of the State.

Under the Act approved July 6, 1931 (Act No. 350—H. 44—Holland) Sections 372 and 373, School Code of 1927, are amended. Section 372 is amended so that after the approval of the Act an application for State aid for the erection of a **school building or teachers' home, or the repair or equipment of a school building** need not show that **twice** the amount for which aid is asked has been secured by the County Board but **only an amount equal to that** for which aid is asked.

Section 373 is amended (and as amended also affects Section 377) **so that instead** of there being a maximum State Aid limitation of $450.00 per standard class room in new school-houses erected, and $400.00 per standard class room erected as additions to school-houses already existing, and no general maximum for rooms **other than standard class rooms,** auditoriums, work rooms, etc., and instead of the amount of State aid in the erection of teachers' homes being determined by the number of rooms therein (Sec. 377), now the schedule for State Aid in all such cases in $900.00 maximum per **standard class room,** whether the aid be sought in the erection of a new school-house or in adding new standard class-rooms to an old school-house; $400.00 **per room of any other sort not specifically provided for where** a new school-house is being erected; and $400.00 per room in new teachers' homes erected.

Where an application was filed under the law as it existed prior to the passage of the new acts, the application approved, State Aid granted on the old ratio, while under Section 385, School Code, the State Aid warrant may be returned for cancellation before the expiration of the twelve

months' period when the County Board of Education shall certify that the patrons are unable to comply with the requirements of the law, nevertheless, this provision of law should not be construed so as to allow County Boards to return such warrants for cancellation simply for the purpose of taking advantage of the increased schedule. Such certificate must be made in good faith and where, on investigation, the State Department of Education ascertains that the certificate returning such warrant for cancellation was not made in good faith, the Department may properly reject a renewal of the application on the same project at the increased rate.

(See Secs. 380, 382, 385).

The granting of the maximum amount scheduled in amended Section 373 is not mandatory where the contract price or cost is less than the sum of the maximum State aid allowable and local matching funds.

Now, Sections one and two of the Act approved July 8, 1931 (Acts No. 370—H. 350, Ware) are as follows:

> Section 1. That where County Boards of Education have incurred debts, evidence by warrants or otherwise, in the erection, repair or equipment of rural school houses according to plans and regulations set out in Sections 370 to 386 of the Alabama School Code of 1927, it shall be lawful for the State Board of Education, to appropriate rural school house funds to such counties for the purpose of paying such indebtedness, provided that there are no new buildings or equipment erected or installed in any county to consume such county's apportionment or share of such rural school house funds for any fiscal year.
>
> Section 2. That if during any fiscal year there are no new buildings erected or equipment installed that could be paid for, or is paid for, out of the rural school house funds the county Board of Education of any County may make application to the State Board of Education and obtain such County's proportionate share of such rural school house funds and apply the same on any indebtedness incurred by such County Board of Education in the erection, repair and equipment of rural school houses during previous years. Provided, however, that such application shall show at least twice the amount for which such aid is asked has already been secured from other sources than from the State, and that proof must be made to the State Board of Education by the County Board of Education, that debts that have been incurred in the erection, repair, and equipment of rural school houses which have already been erected under the plans and specifications of the State Board of Education, and at least twice the amount for which such aid is asked has already been secured from other sources than from the State and that all the provisions of Section 370 to 386 inclusive of the Alabama School Code of 1927 have been fully complied with.

While it is true that Sections 371 and 386, School Code make a distinction as to the methods of distribution or division of the rural school house erection, repair and equipment funds dependent on the time of year at which applications are made, as well as the amount of the application, nevertheless, whatever a county gets is its "share" for that fiscal year, whether it be partly by apportionment and partly by proportionment. The object of the Ware Act, as I see it, was to afford a county an alternative means of availing itself of its share in the annual appropriations for rural school-houses, by providing that if it did not consume its share for building, repair or equipment, or did not desire to do so, and, at the time of the passage of said act, ie., July 8, 1931, had already incurred debts, evidenced by warrants or otherwise, in the erection, repair or equipment of school-houses, it might, by putting up twice the amount asked for, secure its share of such funds, whether the amount be its share as determined by apportionment prior to September 1st, or by proportionment thereafter.

This position is strengthened by a consideration of the fact that the Act specifically refers to a "fiscal year" and specifically refers to Section 386, School Code. I do not think the Act was intended to permit applications for debt-aid up to September 1st, and prevent applications for debt-aid against the unexpended balances existing on and after September 1st. I think we should get down to the fundamental purpose of the Act as a whole, which shows that the Legislature was considering the fund dealt with over an **entire fiscal year** and not **part** of a year, and shows also that the Legislature was considering all of Article XVIII and not isolated parts thereof.

Therefore, specifically answering your question will state that whatever State Aid you may get toward the erection of the building depends on the new schedule of allowances. The most that you can get in any one year is the total of your apportioned share, plus your pro-rata part on redistribution on September 1st. As to whether additional State aid may be granted next year on the project depends on whether the State Department of Education will approve of same. The only amount you can be sure of getting is that part allocated to your county under Section 371, School Code, for there may be nothing left to distribute September 1st under Section 386, School Code.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 22, 1931.

Hon. W. L. C. Haigler, President,
Board of Revenue,
Hayneville, Lowndes County, Alabama.

County may make appropriation of county funds in aid of construction of road by State.

Opinion by the Attorney General.

Dear Sir:

Supplementing the opinion given you under date of July 7, 1931, and in answer to your further inquiries relative to the right of Lowndes County to pay a part of the cost of a road which the Convict Department of the State of Alabama is undertaking to build in your County, my information is that the Convict Department had begun the construction of this road, but found it more economical to complete the construction by contract with private contractor. I further understand that the Convict Department proposes to pay for the work under the proposed contract with the State of Alabama, non-interest bearing warrants without a fixed date of maturity, and that the Convict Department is unable or unwilling to complete the construction with its own forces, and is unable to construct the road by contract unless interest is paid on the contract price of the road from its completion until the State warrants issued to the contractor are paid. I also understand that your Board of Revenue, in consideration of the benefits which your County would obtain from the building of the road, is willing to contribute county funds, in cooperation with the State funds, sufficient to insure the building of the road; the amount of the County's contribution being measured by the interest on the State warrants from their issuance to their maturity.

You ask my opinion as to the right of your Board to appropriate sufficient money to pay the interest on the State warrants.

The general powers of the Boards of Revenue and Commissioners Courts are discussed at length in my former letter to you of July 7th, 1931, which I now confirm.

The counties, through their governing bodies have long had the power to pay interest, as such, on their own debts, and to issue warrants bearing coupons or warrants representing the interest.

Can the County pay interest on the debt of the State of Alabama, where the State debt is created for the benefit of the county, and the State pays the principal and the County the interest in a common enterprise or betterment.

A similar question arose over the right of a county to pay a part of the cost of improving a public street in the corporate limits of the town of Eutaw, where the street improvement also was of benefit to the county. The statute at that time (1914) gave no specific authority to the county, to pay for such a street improvement other than the general grant by the Legislature to counties of legislative, judicial and executive authority with reference to roads. In speaking of this situation, Chief Justice Anderson, in his concurring opinion, in the case of Town of Eutaw v. Coleman, 189 Ala. page 181, said:

"It may be that paving the streets in question was primarily the improvement of the municipal highway, so far as the town is concerned, but, as to the county, it was but an improvement of its property, and the fact that it also operated to improve the streets was a mere incident to the betterment of its property. If the county could make such improvements alone, there is no sound reason why it could not cooperate with the adjoining owner in doing something mutually beneficial."

In my opinion the Board of Revenue of Lowndes County is legally authorized to make the appropriation inquired about, and cooperate with the State in the construction of the road. As to the State the appropriation would be interest—as to the County it would be a part of the cost of consruction of a beneficial county road.

The payment of interest in my opinion is legal.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 30, 1931

Hon. Arthur H. Berg, Chairman,
Board of Registrars,
109 Monroe Street,
Mobile, Mobile County, Ala.

Board of Registrars—Notices of sittings—Expenses of same—how paid. Expense of members.

Opinion by Assistant Attorney General McCall.

Dear Sir:

This acknowledges receipt of your letter of September 26, 1931.

You request my opinion:

1. What provision of law is there to cover expenses of the Board of Registrars in posting notice of sittings in the various precincts of a county?

2. What provision of law is there for payment of expenses of members of said Board in making their sittings?

In answer to your first question, I call your attention to Section 386, Code of Alabama, 1923, which provides as follows:

386. Registration books, forms and blanks furnished by secretary of state.—The Secretary of state shall, at the expense of the state, have prepared and furnished to the registrars and judges of probate in the several counties a sufficient number of registration books and blank forms of oath, certificates of registration, and of notices required to be given by registrars. The cost of the publication of the notices required to be given by the registrars shall be paid by the state, and bills therefor to be rendered to the secretary of state and approved by him.

You will, therefore, see that the State pays the expense of publication of notices.

In answer to your second question, I call your attention to Section 373, Code of Alabama, 1923, which is as follows:

373. Fees, compensation of registrars.—Each registrar shall receive seven dollars and fifty cents per day, to be paid by the state and disbursed by the several judges of probate, for each day's attendance upon the sessions of the board.

The above is the only compensation received by the Board members under the general law. There is no provision for reimbursement for traveling expenses.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

Copies to:
Mrs. Sarah E. Sossaman,
Board of Registrars,
Mobile, Alabama.

and,
Mr. Jacob D. Bloch,
Board of Registrars,
Mobile, Alabama.

September 30, 1931

Hon. A. F. Harman,
State Superintendent of Education,
CAPITOL.

Schools—Rural School House Erection, Repairs and Equipment Fund—Act No. 370 (H. B. 350, 1931) Construed.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of September 2, 1931, together with attached memorandum, in which you make the following inquiries (which will be renumbered and reworded for convenience) relative to the construction and effect of an act approved July 8, 1931, (Act No. 370, H. B. 350—Ware).

1. Is it mandatory or optional that the State Board of Education make the appropriations for the retirement of the indebtedness as contemplated in said act?

2. What is the maximum amount available under said act for the retirement of the indebtedness on any State Aid School Building?

3. Must the interest on debts incurred by County Boards of Education as contemplated in said act be included in such indebtedness?

4. Is the amount of aid available as contemplated in said act payable immediately or shall only such amounts be available as fall due within the fiscal year?

5. Must the County Boards of Education have raised twice the amount applied for, which together with State Aid shall be applied to the retirement of the debt?

6. Must twice the amount asked for be raised and placed in the hands of the County Treasurer of School funds as a condition of the approval by the State Board of Education or the application for such aid, or may the approval be conditional upon the raising of the necessary amount at the due date of the warrant or other legal evidence of the indebtedness?

7. Does Section 384 of the School Code 1927 serve in any way to nullify the provisions of the act under consideration?

Before answering specifically your inquiries, wish to quote from an opinion of the Attorney General rendered to Hon. H. C. Ray, Principal of Hicks Memorial High School, Autaugaville, Alabama, on September 17, 1931 relative to the Ware Bill which is as follows:

"The object of the Ware Act, as I see it, was to afford a county an alternative means of availing itself of its share in the annual appropriations for rural school-houses, by providing that if it did not consume its share for building, repair or equipment, or did not desire to do so, and, at the time of the passage of said act, ie., July 8, 1931, had already incurred debts, evidenced by warrants or otherwise, in the erection, repair or equipment of school-houses, it might, by putting up twice the amount asked for, secure its share of such funds, whether the amount be its share as determined by apportionment prior to September 1st, or by proportionment thereafter."

In answer to your first inquiry, I am of the opinion that it is mandatory upon the State Board of Education to make the appropriations as contemplated in said act when the conditions contained therein have been complied with. Section 1 of said Act states that it shall be "lawful" for the State Board of Education to appropriate, etc., and Section 2 provides that the County Board of Education may make application and "obtain" the county's proportionate share, etc.

In answer to your second inquiry, I am of the opinion that the maximum amount of aid available under said act to any one county for any fiscal year shall in no case exceed the total amount of the amount apportioned to said county per year plus its redistribution portion. But, the maximum amount available for any one building is one-third of the remaining unpaid indebtedness on said building. The act provides for the retirement of the "indebtedness incurred" which in my opinion contemplates the amount of the remaining unpaid indebtedness and not the amount of the total original indebtedness, ie. the total cost of the building. There is no limitation in said Act as to the amount that may be appropriated for "debt aid" to any particular type of building, as distinguished from "building aid" as contemplated in Sections 372 and 379, School Code, 1927.

In answer to your third inquiry, I am of the opinion that the "indebtedness incurred" as used in said act includes the **principal owed plus the interest accrued** at the time said act went into effect, ie. July 8, 1931.

"Indebtedness" means a state of being indebted or a sum owed.—4 Words and Phrases, 208 (3 Series).

In answer to your fourth inquiry, I am of the opinion that the amount of aid available as contemplated in said act is payable immediately, regardless of whether or not the indebtedness incurred is presently due. The act makes no reference to the due date of the indebtedness, but merely refers to "indebtedness incurred," as above defined.

In answer to your fifth and sixth inquiries, I am of the opinion the County Board of Education must have raised twice the amount applied for, which together with the State Aid shall be applied to the retirement of the debt. And further, the approval of the State Board of Education must be conditioned upon said sum raised by the County being placed in the hands of the County Treasurer of School funds. Said sum so raised shall be **cash and together with the State Aid actually and presently used on the retirement of the indebtedness,** and shall not be withdrawn or used for any other purpose after State Aid is secured. The act specifically provides that twice the amount of the aid applied for shall have been raised from other sources than the State and specifically provides that same shall be applied on the payment of the indebtedness.

When the State warrant is issued and placed in the hands of the County Treasurer of School Funds, the local matching funds should be **immediately** applied to payment of the debt, whereupon, the State authori-

ties being satisfied that all provisions of law and the regulations of the Department of Education have been fully met then the State authorities release the warrant to be cashed, and the warrant must be immediately applied on the debt. The warrant must be promptly used as above set forth. If not used within the time prescribed by the School Code as for State Aid warrants for building purposes, etc., it may be cancelled under the same conditions. (See Section 385, School Code, 1927).

In answer to your seventh inquiry, I am of the opinion that Section 384 of the School Code, 1927 does not in any way nullify the provisions of the Act under consideration, as said Act is of later passage. Both should be construed in pari materia and both given full force and effect if possible. The new act will not tend in any way to nullify Section 384 of the School Code of 1927, as said act applies only to passed incurred indebtedness incurred prior to its passage ie. July 8, 1931.—Opinion of Attorney General rendered to Hon. H. C. Ray, Supra.

It must be borne in mind that before State Aid can be granted under the act under consideration, all of the provisions of same must have been complied with to the fullest extent.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 30, 1931

Hon. G. O. Wallace,
Judge of Probate,
Clayton, Barbour County, Alabama.

Election—Constitutional Amendments—supplies for such elections furnished by county.

Opinion by Assistant Attorney General McCall.

Dear Sir:

This acknowledges receipt of your letter of September 21, 1931, in which you request my opinion:

By whom are the ballots and other supplies furnished for the forthcoming election on Constitutional Amendments?

In answer will state that such election supplies are furnished by the respective counties at their expense, the same as in general elections.

T 175 185 186 198

See Section 284, Constitution, and Sections 495, 496 and 509, Code of Alabama, 1923.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 30, 1931

Hon. Chas. C. Greer,
Superintendent of Insurance,
CAPITOL.

Under Section 8347 of the Code, Insurance Commissioner is directed to value all outstanding policies of insurance, of whatsoever nature or kind, whether written by domestic or foreign companies, and the method of valuation provided by Section 8347 is modified and changed only by Sections 8417, 8389 and 8482.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I beg to acknowledge receipt of your letter of September 16, 1931, as follows:

"I invite your attention to Sections 8340 and 8347 of the Code of Alabama 1923. These sections are designated as Sections 22 and 29 in the Insurance Laws of June 1, 1928.

"I construe these two Sections to mean that, as Superintendent of Insurance, I have the authority to require that all insurance contracts, whether life or property insurance, or whether issued by domestic or foreign companies be valued according to standards, rules and regulations prescribed in Section 8347, the terms of which section are defined in Section 8340.

"Please advise me officially whether I may proceed to require that all kinds of insurance contracts, whether life or property, be valued according to rules prescribed in Section 8347."

In answer to your inquiry:

Section 8347 of the Code of Alabama of 1923 provides:

"Method of ascertaining status of foreign and domestic life companies.—The insurance commissioner shall each year compute the net value on the thirty-first day of December of the preceding year, of all outstanding policies of life insurance in companies authorized to

make insurance on lives in this state upon the basis of the 'combined experience' or 'actuaries' table, or the 'American experience table' rate of mortality, with the interest at four per cent per annum; and the aggregate net value, so ascertained, of the policies of such company shall be deemed its liability on account of its policy obligations, other than accrued claims, to provide for which it shall hold assets of an amount equal to such net value above all other liabilities. Whenever a foreign life insurance company shall present to the insurance commissioner a certificate from the insurance commissioner of another state, as to the value of its policies in force, the insurance commissioner of this state shall be allowed to accept such valuation in lieu of his own valuation; the valuation shall be made according to the standard fixed in this section. To determine the liability upon its contracts of insurance of an insurance company other than life, the insurance commissioner shall require such company to charge as the liability for re-insurance of outstanding policies fifty per cent of the premiums received on policies or risks having not more than one year to run, and a pro rata of all premiums received on policies or risks having more than one year to run, and in the case of companies doing a liability insurance an additional reserve fund shall be charged and known as 'liability reserve' to an amount of not less than three hundred dollars for each suit pending against such company's policy holders, for which it may be liable in the lower court, and seven hundred dollars additional when such suit is appealed by the defendant to a higher court. The insurance commissioner shall allow to the credit of any insurance company in the account of its financial condition, on such assets as are or can be made available for the payment of losses in Alabama. He shall not allow stockholders' obligations of any description as part of the assets or capital of any insurance company unless the same are secured by collateral satisfactory to the insurance commissioner."

Section 8340 of the Code of Alabama of 1923, provides:

"Definition of terms used in this article.—When consistent with the context, and not obviously used in a different sense, the term 'company' or 'insurance company', as used in this article includes all corportions, associations, partnerships, or individuals engaged, directly or indirectly, as principal in any business of insurance; the word 'domestic' designates those companies incorporated or formed of individuals living in this state; and the word 'foreign' when used without limitation, includes all those formed by authority of any other state or government; the terms 'unearned premiums' and 'reinsurance reserve' and 'liability reserve' and 'net value of policies' or 'premium reserve' severally, intend the liability of an insurance company upon its insurance contracts, other than accrued claims, computed by rules of valuation established by section 8347 (4555); by the term 'net assets' is meant the funds of an insurance company available for the payment of its obligations in Alabama."

It is my opinion that Section 8347 places upon the Insurance Commissioner the duty to value all insurance policies in this State according to the standards and regulations prescribed in this Section. This Section directs the Commissioner of Insurance to value all outstanding policies of insurance, of whatsoever nature, type or kind, including life insurance and property insurance, whether written by foreign companies or domestic companies according to the standards prescribed in said section.

I know of but one exception to the method of valuing outstanding policies provided for in Section 8347, and this exception is found in Section 8417 of the Code of Alabama, 1923. This Section provides:

> "Mutual insurance companies not subject to provisions of Section 8347 (4555) of this Code.—All such corporations, companies, or associations having no capital stock, but paying its policies from dues and assessments or premiums collected from its members, shall not be subject to the provisions of Section 8347 (4555) of this Code."

In other words, Section 8347 does not apply to the companies or associations mentioned in Section 8417.

The standards and methods of valuing outstanding policies mentioned in Section 8347 is modified by Section 8389, which Section provides:

> "Reserve: amounts of, how maintained.—There shall at all times be maintained as a reserve a sum in cash or convertible securities equal to fifty per cent of the aggregate net annual deposits collected and credited to the accounts of the subscribers on policies having one year or less to run, and pro rata on those for longer periods. For the purpose of said reserve, net annual deposits shall be construed to mean the advance payments of subscribers after deducting therefrom the amounts specifically provided in the subscribers' agreements, for expenses. Said sum shall at no time be less than twenty-five thousand dollars, and if at any time fifty per cent of the aggregate deposits so collected and credited shall not equal that amount, then the subscribers, or their attorney for them, shall make up any deficiency.

Under the Section just quoted the reserve is based upon the net annual deposits instead of the gross as provided in Section 8347.

The method of valuing outstanding policies described in Section 8347 is also modified by Section 8482, which Section provides:

> "Minimum standard of valuation.—The legal minimum standard of valuation for all certificates, except for disability benefits, shall be the national fraternal congress table of mortality as adopted by the national fraternal congress, August 23, 1899, or, at the option of the society, any higher table, or, at its option, it may use a table based upon the society's own experience of at least twenty years and covering not less than one hundred thousand lives with interest as-

sumption not more than four per cent per annum. Each such valuation report shall set forth clearly and fully the mortality and interest basis and the method of valuation."

Under the Section just quoted, the statute of valuation is modified to the extent that fraternal companies are allowed to use the national fraternal congress mortality table instead of the tables mentioned in Section 8347.

It is, therefore, my opinion that you, as Commissioner of Insurance, have full authority to proceed to value all outstanding policies of insurance provided by Section 8347, except as this Section is modified and changed by Sections 8417, 8389, and 8482.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 1, 1931

Hon. E. L. Hurst,
Judge of Probate, Etowah County,
Gadsden, Alabama.

Disabled Veteran entitled to exemption from chauffeur's license under the provisions of the Kelly Act exempting Disabled Veterans from certain business and occupational licenses.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 21, 1931, in which you state:

"Would like to have your opinion as to whether Ex-Service men with disability would be exempt from taxi license, also chauffeur license, under the law passed in July, 1931."

In reply I advise that in an opinion rendered to the State Tax Commission under date of August 6, 1931, it was held that the exemption Act exempting ex-service men from certain licenses did not apply to motor vehicles.

It is my judgment that the occupation of chauffeur is such an occupation as to entitle the Disabled Veteran to an exemption from such license, if he can come within the terms of the law.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 1, 1931

Dr. A. F. Harman,
State Superintendent of Education,
CAPITOL.

Schools—1. Disposition of tax funds paid over to County Treasurer of School Funds and presently in his hands where competent authority has declared the tax levy illegal through which such funds came into County Treasurer of School Funds hands.

2. Disposition of proceeds of **valid** levy of district tax where levy in such district has expired and original tax district has been made a part of a new district in which a new valid levy of a district tax has been made.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of September 14, 1931, enclosing letter from Hon. J. M. Lawson, County Superintendent of Education, Athens, Limestone County, Alabama, dated September 10, 1931. He states that in his county there are balances to the credit of several district tax funds (in the hands of the County Treasurer of School Funds); that in thirty-seven of the districts the district taxes expire in 1932.

My opinion is requested:

1. Where balances have accrued to the credit of several districts levying and collecting district taxes, and where the tax has been declared **null and void** by the courts, and new districts have been formed by the County Board of Education according to law, can these balances be spent anywhere in the new district formed by the County Board, or must they be spent in the original districts.

2. Where balances have accrued to the credit of districts levying and collecting district taxes, and where the tax **has expired** and new districts have been formed by the County Board of Education according to law, can these balances be spent anywhere in the new district formed by the County Board or must they be spent in the original districts.

In answer to your first question will state the school authorities of the county cannot legally expend any part of the revenue realized from an invalid tax levy. Such funds coming into the hands of a County Treasurer of School Funds through a void levy must be held by him and not be expended for any school purpose. The County Board of Education should cause the entire amount thereof to be refunded to the Tax Collector on his application, and the same at all times is held in trust by the proper officer for refund to those who were wrongfully required to pay

the same. District taxes illegally collected may be recovered back by those who paid the same to the Tax Collector.

Opinions Attorney General, 1928-1930, p. 746, 747.
Wall-Hay-Wall Lbr. Co. vs. Mathews, (Ala.) 100 So. 824.
Section 3144, Code of Alabama, 1923.

Answering your second question will state that such funds can only be spent for the exclusive benefit of the public schools lying in the district as originally created.

You speak of the County Board of Education having subsequently "formed" new districts in accord with law. The County Board of Education cannot form a **school tax** district. The people must do that. The County Board of Education demarks the boundaries, petitions the Commissioners Court to call a district tax election therein, and the people then vote on the same in the territory outlined. (Section 270, School Code) A "school district" is one thing. A "school tax district" is another. The County Board of Education may fix the boundaries of "school districts" at will, but there is only one way to form a "school **tax** district", and when it is formed, so long as the tax is levied therein, it cannot be enlarged except as provided by the School Code for consolidation of such tax districts. You do not indicate what kind of a "district" or "districts" have been formed for that territory in which such tax is expiring.

If you mean that where the tax has expired the County Board of Education has formed new territory as a school district, and not as a new tax district then clearly the balance should be expended on the schools in the original tax district. Where the levy has expired in the original tax district, and subsequent thereto, a new district is formed in which a tax is voted, which new territory takes in the old tax district, and where there is an unexpended balance to the credit of the original district, such balance can only be expended for the benefit of the schools in the original tax district territory. Where two or more districts are consolidated, as provided by Section 275, et seq., School Code, by vote of the people of the respective districts, the remainder in any old district may be spent in the consolidated district, subject to the proviso in Section 277, School Code.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 1, 1931

Hon. Wm. F. Feagin,
Director, Board of Administration,
CAPITOL.

(1) Senate Bill 276 by Hildreth held constitutional.

(2) Senate Bill 276, supra, repeals Section 5621 by implication.

(3) A fee of twenty-five cents for issuing and fifty cents for serving subpoenas under the Hildreth Bill, should be taxed upon conviction against the defendant.

(4) Section 3667, supra, provides for the payment to the clerk and sheriff of twenty-five cents for issuing and fifty cents for serving additional subpoenas.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of August 28, 1931, in which you state:

"Sections 5615—5639 inc., Code of 1923 provides for the modes of procuring attendance and testimony of witnesses in criminal cases.

"Section 5621 specifically provides that witnesses be subpoenaed but once except on reversal judgment.

"An Act approved July 28, 1931, Senate Bill 276—Hildreth, provides that witnesses be resubpoenaed in all continued cases."

You request my opinion:

1st. Is Senate Bill 276—Hildreth constitutional?

2nd. If constitutional, is Section 5621 repealed?

3rd. If constitutional, should the defendant be taxed upon conviction the fee of 25c for issuing and a fee of 50c for serving such additional subpoenas?

4th. If constitutional, is the Convict Department, under Section 3667, to pay a fee of 25c for issuing and 50c for serving such additional subpoenas?

Sections 5615 and 5639, inclusive, Code of Alabama, 1923, have no bearing on the matter here under consideration. Section 5615, supra, simply says that no subpoena shall issue in a criminal case unless the defendant is under arrest. Section 5639 provides that husband and wife may testify against each other.

It is my opinion that Senate Bill 276 by Hildreth, approved June 28, 1931, is constitutional. It is true it is in conflict with Section 5621, Code of Alabama, 1923, but it being a later enactment it must be held to repeal Section 5621, supra, by implication, as there is no room for the operation of both laws. This principle has been settled by numerous decisions by our Court of last resort.

In answering your first inquiry I have answered your second.

Answering your third, I realize that this bill seeks to increase the fees of the Circuit Clerk during his term of office, but on the other hand it adds additional duties to his office. This being true, under numerous decisions of our Court, he would be entitled to the additional compensation provided for such extra work.

My answer to your fourth inquiry is in the affirmative. In declaring the Hildreth Act, supra, constitutional, and that the clerk is entitled to receive pay for the additional services, has put the payment of these fees directly under Section 3667, Code of Alabama, 1923, where their payment is duly provided for.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 1, 1931

Hon. A. L. Hasty,
Judge of Probate,
Linden, Morengo Co., Ala.

District Tax—consolidation of—how accomplished.

Opinion by Assistant Attorney General McCall

Dear Sir:

I have your letter of September 3, 1931, with blue print of Marengo County. As I understand your letter the facts are as follows:

You have a **county one** mill tax. You also have a county three mill tax. And, in all territory in the county with the exception of certain school districts in north Marengo, also Octagon, Vineland, West Hoboken, and East Horse Creek precincts, you have special three mill district tax levies. Your county is divided up into various districts some of which voted special three mill district tax, and some of which have not.

You want to know how you can go about making that territory that is not paying a district tax subject to such a tax.

In answer will state that it is the duty of the county board of education to demark the boundaries of each school district in the county. Having fixed the boundaries of a school district, the county board of education may ask the commissioners court to call an election in such **school** district for the purpose of voting on a three mill district tax for such district. Only qualified electors residing in such school district can vote on

a tax election for that district. If the people residing in that district vote the tax then **that particular territory whose boundaries have previously been fixed by the county board becomes a school tax district,** and thereafter, during the time that such tax therein is in existence, its boundaries cannot be altered to take in any additional territory except in strict conformity with Sections 275, 277, 278, 279, and 280, Alabama School Code, 1927.

Under these sections if for instance there are ten school districts in the county, five of which each has separately voted a district tax and the other five have not and it is desired to consolidate four of them with adjacent territory or districts not having then a district tax, an election must be called in **each and every** one of the districts concerned; both those that are paying the tax and those that are not, in the manner provided by the law cited, and if the proposition to consolidate and levy a tax for a uniform rate for a uniform period in the proposed consolidated territory is **voted down in any one** of the districts, whether it be a district already paying the tax or a district proposed to be brought in, then it **fails in all of them.**

This office also has heretofore held that the county may not be made into one tax district, such as you suggest.

A petition for a district tax election, or for consolidation of two or more districts or for consolidation of a tax district with a non-tax district adjacent thereto, is made to the commissioners court by the county board of education, and the law does not require any residents of the district or districts to sign the same.

See Sections 261, 275, School Code, 1927.

From the foregoing you will observe that your plan is not feasible, for the reason that consolidation of districts is not determined by a majority of the whole number of votes cast in all the districts, but the matter is determined by the majority of votes cast in **each separate district.**

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 1, 1931

Hon. I. N. Hobson,
Clerk, Circuit Court,
Tuscaloosa, Alabama.

Non-resident—suit filed by.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of September 18, 1931, in which you request an opinion of this office on the following matter:

> "When a suit is brought to my office for filing by an attorney and the plaintiff is a non-resident of the State of Alabama, have I the right to refuse to file this suit until the Plaintiff deposits with me a sufficient amount of money to secure the costs in the suit or gives me a bond to secure it?
>
> "Should your answer be that I have not such authority would I be liable to the State of Alabama for the trial fee of $3.00 and to the County of Tuscaloosa for the stenographer's fee should there be one, in such a case?"

It is my opinion that you would not be justified in refusing to file the suit because security for costs is not made, nor would you be liable to the county or State for those fees mentioned.

Section 7249, Code of Alabama, 1923, is as follows:

> "All suits at law or in equity, commenced by or for the use of a non-resident of this state, **must be dismissed on motion,** if security for the costs, approved by the clerk or register, be not given by such non-resident when the suit is commenced, **or within such time thereafter as the court may direct."**

The last clause of this section shows that the court has a discretion as to the length of time which a non-resident plaintiff should have in furnishing security for costs, and if the clerk were allowed to refuse to file a suit because security is not offered, then this part of the section would be a nullity. The case of **Colley v. Atlanta Brewing and Ice Co.** 196 Ala. 374 says as follows:

> "The matter of the time allowed a non-resident plaintiff to give security for costs as required by Sec. 3687, Code of Alabama, 1907, is largely within the discretion of the trial court, and the action of the court in permitting such security to be given within the time directed by the court is not an abuse thereof."

This seems to uphold the contention that the clerk must file the suit.

I am aware of no provision of law imposing upon the clerk the costs in a suit filed by a non-resident who does not give security for costs.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 1, 1931

Hon. E. L. Bush,
Clerk of the Circuit Court,
Butler, Choctaw County, Alabama.

(1) Witness costs in criminal cases—how collected.

(2) Costs accrued at the instance of the plaintiff in civil matters—how paid.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of August 27, 1931, in which you request my opinion as follows:

"Will you please give me an opinion on the following:

"(1) For example, Richard Roe is indicted in the County or Circuit Court and his case continued two or three times and witnesses appear from time to time, are they entitled to draw a certificate of attendance each time they attend, and if so should these be charged against defendant? And if this defendant be sentenced either to hard labor or penitentiary should not the State pay these witness fees, even though they should draw more than one certificate of attendance?

"(2) Now, give me an opinion on a civil matter, for example: Richard Roe, Plaintiff, v. John Doe, Defendant. The judge in this case renders judgment for plaintiff against defendant, the clerk issues an execution to that effect, the sheriff returns execution, "No property found." Then clerk issues against plaintiff for costs which have accrued in this case, does this include the costs both defendant and plaintiff have caused or just plaintiff's cost. Thanking you for this information, * * *"

Answering your first inquiry will say the State will pay only such costs where the defendant was sentenced to the penitentiary or to hard labor as are included in Section 3667, Code of Alabama, 1923, which is as follows:

"3667. Costs of conviction; items to be paid—Whenever a defendant is convicted, and sentenced to the penitentiary the following items of costs in the case shall be paid out of the convict fund, to the extent and in the manner hereinafter prescribed, to wit: For issuing each capias or warrant (once), fifty cents; docketing cause, ten cents; issuing each subpoena for state's witnesses, twenty-five cents; each undertaking or recognizance, and entering same, fifty cents, trial, fifty cents; entering judgment, twenty-five cents; final judgment, twenty-five cents; record for supreme court (per hundred words), fifteen cents; making final record (per hundred words), fifteen cents;

making transcript and certificate thereof (per hundred words, fifteen cents; entering forfeiture against defendant, fifty cents; sheriff's fees, executing each warrant or writ of arrest, four dollars; approving bond, one dollar; serving each subpoena for state witnesses, fifty cents; for committing prisoners to jail, one dollar; for summoning jury in capital cases, three dollars; state witnesses' fees, which are fixed at seventy-five cents per diem before the grand jury and seventy-five cents per diem before the court of conviction, and five cents per mile for each mile traveled to and from the grand jury and court of conviction, but no witness shall be entitled to fees in more than one case on the same day; cost of committing magistrate and constables or preliminary trial, both together not to exceed five dollars; court stenographer's fee not to exceed three dollars; and when the conviction is secured by a solicitor other than a solicitor who is paid a salary by the state, or when the solicitor is paid a salary by the county, such bill of costs shall also include the solicitor's fee, which is now or may be allowed by law."

Answering you further will say, I think the witness certificates are a proper charge against the defendant, and any balance due after the State has paid its pro rata may become a charge against the fine and forfeiture fund of the county only after execution has been returned against the defendant "no property found." This is provided for in Section 4039, Code of Alabama, 1923, as amended by an Act approved February 18, 1927, (General Acts 1927, p. 45).

Biennial Report of Attorney General 1928-30, p. 225.

Answering your second inquiry, under Section 7263, Code of Alabama, 1923, where a plaintiff has recovered a judgment against the defendant for the principal sum and costs, and execution has been returned against the defendant "no property found," then execution may issue against the plaintiff for costs which accrued at his instance and no other.

Biennial Report of Attorney General 1920-22, p. 394.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 2, 1931

Hon. T. I. Gantt,
Sheriff, Covington County,
Andalusia, Alabama.

(1) The fee of $2.00 a day allowed sheriff for attending in criminal cases applies to days and not to cases.

(2) Claim for such fees must be filed and passed by the Board of Revenue or Commissioners Court.

(3) Ex-Sheriff may file claim for services referred to above, provided such claim is filed within twelve months from its accrual.

(4) Seizure fee and charge for mileage may be charged and payable out of the fine and forfeiture fund of the county provided execution for same has been issued against the defendant and returned "no property found."

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of August 21, 1931, in which you state:

"We have on file in this office an opinion rendered December 18, 1930, as to Section 3741, holding that sheriffs are entitled to a fee of $2.00 each day for attendance on criminal court and $3.00 per day for attendance on civil court where a jury is in attendance to be paid by the county."

You request my opinion as follows:

(1) Does the fee of $2.00 per day apply to all cases or only to days during the trial of capital cases?

(2) Has the Circuit Judge the right or the authority to sign a warrant on the County Treasury for such, or must the sheriff file a claim for such fee with the County Board of Revenue?

(3) Has the ex-sheriff the right to file claim now with the County Board of Revenue for services rendered under Section 3741 during his term of office or how far back can he make claim?

(4) Section 4654 of the Code as to seizure fee and Sections 4768 and 3741 of the Code of Alabama, 1923, as to mileage, etc., where a defendant is charged with violating the prohibition law, and is tried and convicted and sentenced to hard labor for the fine and cost, can the sheriff charge any part or all of the unpaid balance of sheriff's fees in such cases to the fine and forfeiture fund?

Answering your first inquiry, will say that Section 3741, Code of Alabama, 1923, means just what it says where it says for attendance **each day** $2.00. This could not be construed by any reasoning to mean $2.00 for the trial of each criminal case. This allowance of $2.00 is only made where a special court is called for the trial of criminal cases, and does not apply to regular terms of court. It reads as follows:

"For attendance each day on such court to be paid by the county ..... $2.00."

I come to this conclusion for the reason the paragraph just preceding the one I have quoted, reads as follows:

"For summoning jury in capital case, or at any special court for the trial of criminal to be paid out of the county treasury."

Then following this the next paragraph, which we have quoted above, reads as follows:

"For attendance each day on such court to be paid by the county ..... $2.00."

So we must conclude the latter paragraph just quoted, has reference to the court mentioned in the one preceding. Note the wording: "For attendance each day on such court."

Opinions of Attorney General, Vol. 1, p. 211 (office edition).

Answering your second inquiry, it is my opinion the claim must be made out as other claims against the county, presented and passed by the Board of Revenue or Commissioners Court. I find no authority for this being paid on the cretificate of the presiding judge.

Answering your third inquiry, will say the ex-sheriff may file his claim for such service provided he does so within twelve months after the claim has accrued, otherwise it cannot be allowed as it would be barred by the statute of limitations of one year under Section 228, Code of Alabama, 1923, which is as follows:

"228. Claims barred if not presented.—All claims against counties must be presented for allowance within twelve months after the time they accrue, or become payable, or the same are barred, unless it be a claim due to a minor or to a lunatic, who may present such claim within twelve months after the removal of such disability."

State, ex rel. City of Mobile v. Board of R. & R. Com. of Mobile Co., 180 Ala. 514.

Answering your fourth inquiry, will say that you may collect such fees, or balance on such fees, out of the fine and forfeiture fund of the county only after execution has been issued against the defendant for such costs marked "no property found."

Section 4039, Code of Alabama, 1923, as amended by Act approved Feb. 18, 1927, (General Acts 1927, p. 45).

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 2, 1931

Hon. R. L. Shamblin, Sheriff,
Tuscaloosa, Tuscaloosa Co., Ala.

Intoxicating liquors—Sheriff's fee on capture or arrest of a defendant with contraband or prohibited liquors, either with or without a warrant of arrest.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of recent date referring to my opinion of September 1, 1931 to you.

You request my opinion.

If I catch a man with two quarts of prohibited liquors forty miles from Tuscaloosa, Alabama, am I allowed mileage for bringing him and the liquor in?

In answer will state that under Section 3741, you are entitled to have taxed in your favor against the defendant on conviction ten cents per mile each way from the courthouse to the place of arrest, and all expenses for the transportation of the **contraband** or prohibited liquors and beverages **from** the place of arrest to the courthouse.

Of course if there was no arrest you are not entitled to the fee. The "expenses," you will notice, refer to transportation of the liquor and not transportation of the defendant. Your right to the fees under the above mentioned part of Section 3741 is not dependent on the amount of liquor you capture.

For you to be entitled to this fee you will notice also that you must capture or arrest the defendant **"with"** the liquor in his possession.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 2, 1931

Hon. W. F. Feagin,
Director, Board of Administration,
CAPITOL.

Costs and Fees—Committing magistrates on preliminary trials.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I am in receipt of your letter of September 14, 1931 relative to what costs are taxable against a defendant for services of certain committing magistrates on preliminary trials.

The only schedule of costs and fees that I am able to find relative to committing magistrates is that of Justices of the Peace. Yet other officials are required to act as committing magistrates under Sections 5218 and 5136, Code of Alabama 1923. This would be an ex-officio duty imposed upon said official without compensation.

In cases where the committing magistrate is a County Court Judge, I am of the opinion that no fee would attach for this service as there is none provided therefor.

In cases where the committing magistrate is a Judge of an Inferior Cuort, I am of the opinion that no fee would attach for this service unless the act creating said court provided that costs and fees should be the same as are now allowed Justices of the Peace.

I am of the opinion that Inferior Courts created in lieu of Justices of the Peace under local acts and providing for Justice of the Peace costs and fees are not violative of Section 104 (24) of the Constitution of 1901, as said acts do not create, increase, or decrease the percentage or allowances for public officers, but merely create courts in lieu of Justices of the Peace.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 3, 1931

Hon. Landon G. Smith,
Highway Director,
CAPITOL.

1. Under provisions of contract, Alabama State Bridge Corporation held without authority to pay claim for damages asserted to have been caused by misrepresentation in test borings shown on plans and specifications.

2. Alabama State Bridge Corporation not subject to suit as arm of State.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of June 29, 1931, enclosing contract between Alabama State Bridge Corporation and Hardaway Contracting Company for construction of bridge over the Tennessee River at Whitesburg. You also enclose copy of claim of Hardaway Contracting Company for approximately $36,000.00 which sum is claimed as damages by virtue of an alleged breach of contract in that findings upon excavation of piers V and VI are asserted to have been different from those shown in plans and specifications.

As I understand the brief of the contractor's attorneys, the claim is for damages growing out of an alleged breach of contract and not for extra compensation as provided in the contract.

You make the following inquiry:

"In the event it was decided here that Hardaway was entitled to compensation would it be permissible to give any consideration to this in view of the existing contract."

In reply I beg to advise that in my opinion, the Alabama State Bridge Corporation is without authority to pay a claim for damages such as are asserted and claimed in the brief of the contractor's attorney.

In my opinion the Alabama State Bridge Corporation is an agency and arm of the State of Alabama.

Alabama State Bridge Corporation vs. Smith 116 So. 695.

The State of Alabama cannot be made defendant in any Court of law or equity.

Section 14, Constitution.

Instrumentalities of the State are given the same immunity.

Alabama Girls Industrial School vs. Reynolds, 143 Ala. 579.
Alabama Girls Industrial School vs. Adler, 144 Ala. 555.

Your only authority for payment of an amount in excess of the contract price is, in my opinion to be found in the contract. I call your attention to Paragraph 13.23, page 12, Pamphlet B, which is as follows:

"Excavation made necessary by the lowering of any footing below the elevation shown on the plans as ordered by the Engineer, will be paid for on a basis of the contract price per cubic yard for excavation as classified plus the additional percentage corresponding to the total depth lowered as set forth in the following schedule."

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 3, 1931

Hon. C. B. Somerset,
Tax Collector,
Troy. Pike County, Alabama.

Commissioners courts have authority to credit tax collectors with errors and insolvencies as provided for by Section 3069 of the Code of 1923.

By virtue of Act No. 513, extending time of final settlement commissioners courts are authorized to credit tax collectors with such errors and insolvencies subsequent to the June Term, but prior to September 30, for the year 1931.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 4th, which sets out at length facts relating to the assessment of the shares of W. B. Folmar & Sons, Bankers, which name was changed to Citizens Bank & Trust Company, and which has become insolvent. Without quoting your letter, your particular inquiry is whether the commissioners court has authority to credit you with an insolvent, if in their opinion, these assessments against the shareholders are uncollectible, or if the shareholders are insolvent and too, whether in view of the Act of the Legislature of 1931, H. B. 1086 by Allen, approved July 18, 1931, the Commissioners Court have authority to allow this credit subsequent to the June term.

In answer to your first question, it is my opinion that the allowance of an error or an insolvency by the commissioners court is a judicial act and one entirely within their province and power.

Section 3069 of the Code of 1923 specifically provides that this shall be done, in my opinion.

In answer to your second question, the Act above referred to extends the time of final settlement of the Tax Collector from July 10th to September 30th. This would seem to have the practical effect of at least extending the time of the commissioners court to grant errors and insolvencies. The reason, in my judgment, of Section 3068 of the Code of 1923, fixing the June term as the date for the allowance of such errors and insolvencies, is by virtue of Section 3088, making July 10th the final date for settlement. The date of settlement being extended, it seems in consonance with the other provisions that the commissioners court can, subsequent to the June term, but before the date of final settlement, make such errors and allowances, as, in its sound judgment and discretion it may determine.

Section 3074 of the Code of 1923, providing that at the June term following, the Collector must make a final report showing the uncollectible

balances of insolvent taxes allowed him the previous June, indicates that the first allowance is more or less tentative, and hence, as I see it, no harm can result to the State or the counties if Section 3068 be construed as directory to the time and be read along with the amended Section 3088 for the year 1931.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 5, 1931

Hon. G. N. Downer,
County Commissioner,
Aliceville, Pickens Co., Ala.

Health—County Health Unit—Reduction of county appropriation.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of September 22, 1931, addressed to the Governor who has transmitted same to me for reply. In it you state that at a recent meeting of the Commissioners Court you desired to reduce at least 20% the appropriation of the County to the County Health Unit. You were advised, however, by Dr. Austin that the Commissioners Court could not reduce the amount the county is paying.

You request my opinion:

> "If the Commissioners Court should reduce the county's appropriation would such action interfere with the State making an appropriation on a percentage basis, or would the State discontinue its part altogether?"

In answer will state the Commissioners Court is not compelled to maintain a County Health Officer or County Health Unit, but may discontinue the same altogether at any time.

Likewise the Commissioners Court may reduce its appropriation to the County Health Unit at any time.

Likewise, it may withdraw approval of the salary of the County Health Officer in whole or in part at any time. The salary of the County Health Officer is at all times fixed by the County Board of Health, subject to the **approval of the Commissioners Court.**

Section 1059, Code of Alabama, 1923, Acts 1927, pages 778, 779.

Whether the State aid under Section 1160, Code and Act approved August 26, 1927 (Acts 1927, p. 470) would be withdrawn by the State Board of Health in the event the county reduced its appropriations, would depend solely on the discretion of the State Board of Health, as exercised in practice, thru Dr. Baker, the State Health Officer. He need not withdraw it unless he chooses to do so. The Governor of Alabama has nothing whatever to do with the distribution of the State aid for County Health Units. He has no control whatever over the expenditure of this money by the State Health Officer.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 5, 1931

Hon. P. B. Jarman,
Secretary of State,
CAPITOL.

Secretary of State—Disposition of reports of Court of Appeals.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of September 5, 1931 calling attention to Sections 785 and 791, Code of Alabama, 1923.

You state that a contract entered into between the State of Alabama and the West Publishing Co. states that 325 copies of each volume shall be sent to your office. Your mailing list compiled up to date contains 227 names and will leave only 98 copies of each of the reports on hand. Your mailing list covers the distribution to all officials.

You request my opinion:

"Am I authorized to dispose of the remaining 98 volumes of each report until I have only six of each on hand?

"What price should be charged by me for copies of such reports."

In answer will state that Section 791 is a later enactment than Section 785, and to the extent that the same conflicts with Section 785, it controls. Section 791 requires you to sell Appeal reports at $1.00 per volume, but you must keep 100 of each report for the use of the State, officers of the State, and for distribution purposes.

Contracts for the printing of reports of the Court of Appeals are made by the Governor, Auditor and Treasurer of the State.—Section 10335, Code.

The Chief Justice and Associate Justices of the Supreme Court fix the specifications for such reports.—Section 10336, Code.

The price at which such reports are to be sold to the State or are to be sold (by the publishers) to any person residing in the state must be fixed in the contract.—Sec. 10337, Code.

The contract should state the number of each report that state is to purchase.—Sec. 10338, Code.

The report must be copyrighted.—Secs. 775, 10338, Code.

Such reports when printed are delivered to the Secretary of State. —Secs. 784, 10388, Code.

When delivered to the Secretary of State, he distributes copies of such reports of the Court of Appeals to certain officers and offices. —Sections 10342, 10343, 797, Code.

Of the **number left** after such distribution, the Secretary of State may sell all printed and bound volumes of such reports of the Court of Appeals beginning with Volume 1 and ending with Volume 15 (inclusive), at the price of $1.00 per volume, provided, however, the Secretary of State must, out of that number, keep on hand for the use of the State, its officers, and distribution purposes at least one hundred copies of each such serial volume. (Secs. 10343, 791, Code).

This simply means that one hundred copies of each such volume initially received by you are held back to take care of replacements, etc., for the State, and its officers, and no part of this one hundred can be sold.

If after making your distribution as required by law, you have, say 110 copies of a volume on hand, you could sell ten of them at $1.00 each. You could not sell the remainder.

Of course, if in contracting for the same, the State did **not** furnish you with sufficient number, so that after having made the initially required distribution, you have not a remainder of at least one hundred copies of each volume, this is no fault of yours. It is a matter, however, that I would suggest you report to the Governor as a member of the contracting board.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 6, 1931

Hon. Hugh White, President,
Alabama Public Service Commission,
CAPITOL.

Section 7 of Alabama Motor Carrier Act of 1931, construed.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I beg to acknowledge receipt of your letter of September 11, 1931, as follows:

"The Public Service Commission, in the administration of the law under Alabama Motor Carrier Act of 1931, finds that it is difficult for some of the motor transportation companies, having limited capital and assets to obtain bond from surety companies required to be filed by such motor transportation companies under Section 7 of said Act. Some of these motor transportation companies operate over routes which are not parallel to railroads or lines of other transportation companies subject to regulation under the laws of Alabama, and hence are performing a service of transportation for towns and communities that is not being performed by railroads or other common carrier transportation companies, and hence are doing a public service that is necessary for the convenience and welfare of such towns and communities.

"Speaking generally, the common carrier bus and truck lines which parallel existing railroad lines constitute the stronger motor transportation companies and the latter are, generally speaking, able to meet the requirements of the Alabama Motor Carrier Act of 1931.

"The Commission has been advised by representatives of the surety companies that if the State can approve the attached surety bond to comply with said Section 7, that the surety companies will be able to make such bonds for more of such weaker companies than if the bond is executed without including that paragraph in the form hereto attached which begins with the words: 'It is mutually understood, etc.,' and ending with the words: 'shall have been in force.'

"The Commission will thank you to give us an official opinion upon the acceptability of such bonds made upon the form as attached hereto. Since a number of such bonds are being held up awaiting your official opinion hereon, we will appreciate having your opinion in reply hereto as promptly as possible.

"For your convenience we enclose herewith three copies of such form of bond."

I have examined each and every Section of the Alabama Motor Carrier Act of 1931, and especially Section 7 thereof.

Section 7 provides:

> "Before a certificate shall be issued to any motor transportation company it shall file with the Commission a bond in the penal sum of $1,000 payable to the State of Alabama, with some surety company qualified to do business in the State as surety thereon, conditioned that such motor transportation company shall pay any and all mileage taxes and penalties assessed under the provisions of this Act and for the faithful compliance with all lawful decisions, orders, rules, regulations, demands and requirements of the Commission made, rendered, issued or promulgated under the provisions of this Act. Provided, however, the amount of the bond may in the discretion of the Commission be increased to an amount not to exceed $5,000."

I have also examined the provisions in the bond mentioned in your letter, as follows:

> "IT IS MUTUALLY UNDERSTOOD AND AGREED BETWEEN ALL PARTIES HERETO, that if the Surety shall so elect, this bond may be cancelled by giving thirty (30) days' notice in writing to the said Alabama Public Service Commission and to said principal herein, and this bond shall be deemed cancelled at the expiration of said thirty (30) days, the said Surety remaining liable for all or any acts or omissions covered by this bond which may have been done or suffered by the Principal up to the effective date of such cancellation, under the terms, conditions and provisions of this bond, and the Surety shall, upon its release from all liability thereunder, refund the premium paid, less a pro rata part thereof, for the time this bond shall have been in force."

The question presented is whether the proposed provision of the bond just quoted, taken and construed in connection with each and every other provision of the bond, satisfies the requirements of Section 7 of the Act in question.

It is my opinion that the inclusion of the provision above quoted does not, in any way, violate any of the requirements of Section 7. The additional provision, quoted above, is fair, just and equitable, and does not, in any way, discriminate against either the principal, the public or the Public Service Commission. Moreover, the inclusion of the quoted provision will enable many bus lines to qualify, whereas, without the provision, much territory now served by a number of truck lines and bus lines, which lines are not paralleled by any other bus lines or truck lines, or railroads, would probably not be served. I am of the opinion that the bond you enclose,

which includes the provision under discussion, satisfies every requirement of Section 7.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 6, 1931

Hon. Ellis E. Moody,
County Superintendent of Education,
Ashville, Alabama.

County Treasurer of School Funds: Is county officer within meaning of Legislature of 1931, Act No. 478, H. 183.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of September 8, 1931, in which you request an opinion on this office as to whether or not the County Treasurer of School Funds is a "county officer or county employee" as those words are used in an Act of the 1931 Legislature, H. B. 183, which is as follows:

"Section 1. That the Boards of Revenue, Courts of County Commissioners, or like governing bodies of all counties in the State be and they are hereby empowered with the exclusive authority to fix each year the amount of the official bond of all county officers in their respective counties whose official bond is now required by law to be fixed or approved by any other authority. Provided however, that all official bonds shall be made by a surety company authorized to do business in the State of Alabama.

"Section 2. That such boards may at their discretion each year require any or all county employes who are intrusted with the handling of public funds to give bond in such amount and with such surety as it may require, and that the premium on such bonds shall be paid out of the county treasury.

"Section 3. That all laws and parts of law contrary to the provisions of this act be and are hereby expressly repealed.

"Section 4. That this act shall become effective immediately on its approval by the governor."

It has been held by this office that a County Treasurer of School Funds is a county officer as that term is used in Section 2658, Code of Alabama, 1923, which section is as follows:

"After the adoption of this code the officers and authorities authorized to fix and approve or to require additional bonds as to all county officers shall require that the bond of such county officer be made by some surety or guarantee company or companies authorized by the laws of this state to make such bond, and the premiums of such bonds shall be a charge against the county and payable out of the county treasury upon the certificate of the officer or agency requiring, fixing or approving the bond."

In an opinion written to the Judge of Probate of Limestone County, Athens, Alabama the following statement is made:

"I am of the opinion that the county is not liable for the premium on the bonds of a county treasurer of school funds where his term of office began prior to the date the Code of Alabama, 1923, went into effect, to-wit, August 16th, 1924, **but that where his term began on or after August 16, 1924, by the provisions of Section 2658, Code of Alabama, 1923, the premium on the bonds for the term of such officer is a proper charge against the county.**" Biennial Report of Attorney General, 1926-1928, page 573, 258.

However, the School Code of 1927, Section 298, took the County Treasurer of School Funds out of the operation of Section 2658, Code of Alabama, 1923. Section 298 is as follows:

"The County Treasurer of School Funds shall give a surety bond in such sum as prescribed by the State Superintendent of Education and such bonds shall be approved by the State Superintendent of Education. Said bond shall be made in some reputable surety company authorized to do business in Alabama and shall be made at the expense of the County Treasurer of School Funds."

This brings us down to the question, namely: Does this recent Act of the Legislature, H. B. 183, repeal Section 298, School Code of 1927.

It is my opinion that it does insofar as the approval of the bond is concerned. In other words, Section 1 of the recent Act withdraws from the State Superintendent of Education the right to supervise the making of a bond by the County Treasurer of School Funds and places such duty or right on the Board of Revenue or Court of County Commissioners. I am not in a position to say what county officers are not to come within the purview of this Act, if any, and even though the change here made may not be a progressive one, it is not for this office to make the law.

However, I do not think that Section 2 of the recent Act, which provides for the payment of the bond premium by the county, supersedes that part of Section 298, Code of Alabama, 1923, which provides that the premium be paid by the treasurer. Section 2 deals with county employees and not county officials. Section 2658, Code of Alabama, 1923, has already provided how the bond premiums shall be paid for county officers,

except where it is changed, as in Section 298, School Code of 1927. It is my opinion that Section 2 was intended to apply to clerks, assistants, etc., who handle county funds.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 7, 1931

Hon. P. B. Jarman,
Secretary of State,
CAPITOL.

Acts—Distribution of bound volumes.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of September 26, 1931. In it you make inquiry:

To whom should the bound volumes of Acts of the Legislature be distributed?

In answer, I call your attention to Sections 793 and 794, Code of Ala, bama, 1923. You will observe that among others to whom such volumes are to be distributed, the following are listed—"solicitors, clerks of courts of record, (the above includes county solicitors). The Commissioners Court is a court of record, (Section 6748, Code of Alabama, 1923.)

I do not find where you are required to send bound volumes of such Acts to deputy probate judges, deputy clerks, probate clerks, tax collectors, tax assessors, judges of inferior courts generally, judges of juvenile courts generally, county superintendents of education, county treasurers, recorders, county attorneys, clerks of county courts, county courts of misdemeanors, Judges of municipal courts, treasurers, license inspectors, coroners, constables, clerks of court of common claims.

By some statutes certain special courts are made courts of record. Where such is the case the clerk of same should be included in your distribution list. I do not recall these off-hand.

The Act of 1923 (General Acts 1923, page 128) relative to distribution of the Code of 1923, has nothing to do with distribution of acts of the 1931 Legislature. There is no provision for furnishing the Probate Judge as such, with two sets. There is no general provision for your furnishing sets to inferior courts created in lieu of justices of the peace. Inferior

courts and courts of common pleas with powers of justices of the peace are not generally courts of record.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 8, 1931

Hon. W. C. Batson,
Judge of Probate,
LaFayette, Chembers County, Alabama.

Motor Vehicles—Georgia licensed truck owner hauling cotton bought by him and **sold delivered** to point in Alabama, not liable for truck license in Alabama.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of September 26, 1931. You state a concern in Georgia having all Georgia license required by that State, comes into Alabama, hauling cotton which they have bought and have **sold delivered** to certain points in Alabama, by trucks owned by them.

You request my opinion:

"Would this be using a truck 'for hire', and would such concern be liable for Alabama license for such trucks."

In answer will say no.

Section 19, Act approved July 22, 1927 (General Acts, 1927, p. 160), exempts such motor vehicles of non-residents not used for hire in this state, provided under the laws of the State of the residence of the owner, a like exemption or privilege is granted to motor vehicles duly registered under the laws of and owned by residents of this state.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 9, 1931

Hon. John Brandon,
State Auditor,
CAPITOL.

1. The method provided for the assessment and collection of **ad valorem** taxes on automobiles is provided for in Section 19 of Act No. 290, approved September 13th, 1923, and in Act No. 163, approved July 22nd, 1927, Section 72.

2. No **ad valorem** tax is due on automobile until license tax is due on same. No license is due on an automobile each year beginning October 1st until such automobile is used on the public highway as defined by Section 11 of Act. No. 290, approved September 13th, 1923.

3. When an automobile is used on the "public highway" as defined by Section 11 of Act No. 290, approved September 13th, 1923, a license tax becomes due, except in cases where no license tax is required, for operating such automobile on the public highway.

4. The Judge of Probate is not authorized to issue a license for operating an automobile, until the **ad valorem** tax due on such automobile for the preceding tax assessment year has been paid, as evidenced by the receipt of the Tax Collector, delivered to the Probate Judge by the person applying for such license, which receipt must be filed by the Probate Judge.

5. When a license tax on operating an automobile on the public highways becomes delinquent, it becomes the duty of the license inspector to proceed as required by Section 72 of Act No. 163, approved July 22nd, 1927, to enforce the payment thereof to the Judge of Probate. The Judge of Probate cannot issue the required license for operating such automobile until the **ad valorem** tax due on such automobile for the preceding tax assessment year has been paid as already stated. If such person, so delinquent, fails or refuses to pay such license, (which necessitates the payment of the **ad valorem** taxes on such automobile for the preceding tax assessment year) then the license inspector is required by said Section 72 of Act No. 163, approved July 22nd, 1927, to proceed to prosecute such person. The license inspector is also authorized by Section 27 of said Act No. 290 to bring suit in the name of the State and County against the person delinquent in paying such license for the taxes and penalties due the State and County and all fees, penalties and costs due the license inspector.

6. There is no provision of law whereby the Tax Collector may levy on and sell under the tax assessment an automobile, or other property, for failure to pay the **ad valorem** tax assessed on the automobile by the Tax Assessor. The Tax Assessor has no authority of law to include the assessment of an automobile in the assessment of

other property of a taxpayer. Enforcement by the license inspector, according to law, of the payment of the license tax due, always enforces the payment of the **ad valorem** tax due on the automobile, and no other remedy is provided by law in such a case, except by suit as heretofore stated.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Receipt of your letter of August 12th, 1931, is acknowledged. You write as follows:

"Is there any provision of law that authorizes the State Auditor to allow the Tax Collector credit on his final settlement for the difference between the amount of automobile assessments and the amount actually collected by him? Some cases have arisen where the automobile was assessed and then the taxpayer decided not to pay the tax or take out a tag.

"Has the Tax Collector authority to sell the automobile that has been legally assessed, for the taxes that are due on same?"

In reply will say that the method for the assessment and collection of **ad valorem** taxes on automobiles is somewhat different from the assessment and collection of taxes on other personal property. The method of assessing and collecting **ad valorem** taxes on automobiles is provided for in Section 19 of Act No. 290, approved September 13th, 1923. By said Act, when a person applies for a license he must first return his motor vehicle for **ad valorem** taxes to the Tax Assessor of the County in which he resides, **for the preceding tax year,** and the Tax Assessor of such County shall deliver to such person, who makes the return as required, a certificate of assessment on a form prescribed by the State Tax Commission, and such certificate shall be the warrant of the Tax Collector to collect the tax as shown thereon.

It is provided by subdivision (c) of said Section:

"After the first day of October 1923, motor vehicles within the meaning of this Act, shall not be included in any assessment made by any person, firm or corporation as of the first of October, or any subsequent year; and such motor vehicle shall not be considered as escaped property by reason of failure to include same in any tax return as of October 1st, 1923, or any subsequent year, but shall be assessed as provided."

Subsection (d) of said Section provides:

"The Judge of Probate upon issuing a license as herein provided shall require the applicant to surrender the receipt of the Tax Col-

lector, and keep same on file in his office. The license tag shall be evidence of the payment of the license and ad valorem tax due as provided under this Act."

From the foregoing it is clear:

First. It was improper to include in the regular assessment of property named by you the motor vehicle in question; and, having been done so, the Tax Collector should have included the assessment of such motor vehicle among his list of "errors in assessments" in report to the State Tax Commission and to the Court of County Commissioners as provided in Section 3068 of the Code of Alabama, 1923.

Second. Such motor vehicle could not be considered as escaped property by reason of the failure to include same in any tax return since October 1st, 1923.

Third. No **ad valorem** tax is due on a motor vehicle until application for license for such motor vehicle is made, or should be made, and then should be assessed and collected as provided by said Section 19.

By Section 11½ of Act No. 290, approved September 13th, 1923, it is provided:

"All licenses under this Act shall become due October 1st and delinquent November 15th thereafter."

If an automobile is used by its owner, or by permission of its owner, on the "Public Highway" as defined by Section 11 of said Act No. 290, at any time from October 1st to November 14th, both inclusive, such owner became due a license on such automobile as of October 1st, which became delinquent November 15th if not sooner paid. When such license became delinquent, it became the duty of the license inspector to cite such delinquent to appear before him at the Courthouse of the County in which such citation issued and show cause why such license has not been paid, etc., as required by Section 72 of Act No. 163 approved July 22nd, 1927. The Judge of Probate should not issue such license until the **ad valorem** tax due on the automobile for the preceding tax assessment year has been assessed and paid, as provided by said Section 19 of Act No. 290, approved September 13th, 1923.

It thus appears that no assessment or collection of an **ad valorem** tax can legally be enforced until a license is delinquent on such automobile. When the license is delinquent it is the duty of the license inspector to proceed to enforce its payment and the Judge of Probate is without authority to issue such license until the **ad valorem** tax of the preceding year has been assessed and paid and the receipt of the Tax Collector surrendered by the applicant for license to the Probate Judge.

The only duty that a Tax Assessor has with reference to an automobile is to assess such automobile when the owner returns such automobile for assessment and to deliver to such owner, when assessed, a certificate of assessment on a form prescribed by the State Tax Commission.

The only duty that the Tax Collector has with reference to the **ad valorem** tax on an automobile, is when the certificate of assessment issued by the Tax Assessor of the County is delivered to him by the owner of the automobile, to collect the same, give the owner a receipt therefor as prescribed by said Section 19 of Act No. 290, which receipt must be surrendered to the Judge of Probate before the Judge of Probate issues a license for such automobile, which receipt the Judge of Probate must keep on file in his office.

Of course, if no **ad valorem** tax is due on such automobile for the preceding tax assessment year, the Tax Assessor issues to such owner a certificate to the effect that there is no **ad valorem** tax due on such automobile for the preceding year. Such a certificate by the Tax Assessor authorizes the Judge of Probate to issue the license, so far as **ad valorem** tax is concerned.

In my opinion, the Tax Collector has no authority to sell an automobile, or any other property, for the **ad valorem** tax due on an automobile properly assessed. There is no **ad valorem** tax due until a license is due. For the Probate Judge to issue the license, the **ad valorem** tax due for the preceding tax assessment year must be paid. If the license on becoming delinquent is not taken out, the license inspector should proceed as the law directs and compel the owner to take out the license. If he fails or refuses when so ordered, then the license inspector should prosecute him as the law directs. He may also bring suit in the name of the State and County against the owner for the taxes and penalties due the State and County and all fees, penalties and costs due the license inspector to be recovered in one and the same suit, as provided by Section 27 of said Act No. 290.

If an assessment of an automobile has been included by the Tax Assessor in any assessment made by any person as of October 1st of any year and such assessment is included in the abstract turned over by the Tax Assessor to the Tax Collector, there is no way provided by law for correcting the error except in the manner provided by Section 3068 of the Code as heretofore stated.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 11, 1931

Hon. W. T. Taylor, Jr.,
Clerk, Circuit Court, Shelby County,
Columbiana, Alabama.

Section 2619 of the Code of 1923, constitutional and valid.

Opinion by the Attorney General.

My Dear Sir:

I have your letter of October 2nd in which you ask me to construe Section 2619 of the Code of 1923. This Section of the Code provides in substance that where an officer acts under authority of an Act of the Legislature prior to the same having been declared unconstitutional by the Supreme Court, such officer is held harmless for all such acts.

You inquire as to the constitutionality of this Act.

While it is true that under the Constitution of this State the Legislature may not release or postpone any liability or obligation of any person, yet it is likewise true that the Legislature has the authority to define what shall constitute a liability or an obligation.

Section 2619 of the Code above referred to does not in any sense of the word attempt to discharge, release or postpone any liability already incurred prior to the passage of the Act.

It will be noted that the Legislature has heretofore provided that the opinion of the Attorney General holds harmless any County officer acting upon such authority in the discharge of his official duties. The validity of this provision of statute has never been questioned.

I am of the opinion that Section 2619 is constitutional and valid and that one acting upon authority of a presumably valid Act of the Legislature prior to the same having been declared unconstitutional is protected to the extent provided in the statute.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 15, 1931

Hon. D. W. Crosland,
Judge of Probate,
Montgomery, Montgomery Co., Ala.

Person redeeming lands sold for taxes assessable as of October 1, 1929, must pay the amount for which such lands were sold with in-

terest at the rate of fifteen per cent per annum from the date of sale together with taxes due on such lands since the date of sale including the current tax assessing year with interest thereon at the rate of eight per cent per annum from the maturity of such taxes, such taxes to be determined in the manner provided by Section 269, Act 1919, p. 282.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of October 2nd, 1931, in which you state:

"The lands of H. D. Breeding, of this County, were sold on September 2, 1931 for the taxes for 1930, and the State of Alabama bought them in. An attempt is now being made to redeem these lands and we have made the following charges:

"Amount sold for	$	309.61
Interest from date of sale at 15% per annum		3.88
Certificate of redemption		1.00
1931 taxes, due 10/1/31 14,450@$2.00		289.00
1932 taxes, due 10/1/32		289.00
Total	$	892.49

"The question is, should we charge the 1932 taxes, which will not be due until 10/1/32? We have been charging this tax for the 'current assessing year' in making redemptions, under Section 3110 of the Code of 1923."

In reply I beg to advise that as I understand the facts from your letter, the property belonged to H. D. Breeding on October 1, 1929, and was assessable to him as of that date, and that taxes thereon became due October 1, 1930, and that the property was sold for such taxes on September 2, 1931. Therefore, if the property is redeemed subsequent to October 1, 1931, the property would have been assessable as of October 1, 1929, October 1, 1930 and October 1, 1931. You ask should you charge the 1932 taxes. These are the taxes which cover the assessment date of October 1, 1931.

Your question is to be determined, in my opinion, by reference to Section 3110 of the Code of 1923, which provides as follows:

"3110. Mode and terms of redemption where land sold to state.—in order to obtain the redemption of land from tax sales, where the same has been sold to the state, the party desiring to make such redemption shall deposit with the judge of probate of the county in which the land is situated the amount of money for which the lands were sold, with interest thereon at the rate of fifteen per cent per

annum, from the date of sale, together with the amount of all taxes due on such lands since the date of sale, including the current tax assessing year, with interest thereon at the rate of eight per cent per annum from the maturity of such taxes, and all costs and fees due to officers as set out in the following sections."

Section 3110 is to be taken along with Section 269 of the Acts of 1919, p. 282, which appears in the 1929 Revenue Compilation as Section 278, and is as follows:

"Section 269.—It shall be the duty of the State auditor to transmit to the tax assessor of each county, by the first day of August of each year, a descriptive list of all the lands in the county reported to him as bid in for the State during the year, and not redeemed, and it shall be the duty of the assessor to present such descriptive list to the county tax assessor, and it shall be the duty of said county tax assessor, to compare such list carefully with the record of sales of lands for taxes in the county, and of the redemption thereof, and to ascertain if any of such lands have been redeemed, or were not liable for the taxes for which they were sold; if any of such lands are ascertained to have been redeemed, or to have been sold for taxes for which they were not liable, the said county tax assessor shall promptly certify the facts to the State auditor, and the probate judge shall correct the record of land sales in his office accordingly. The county tax assessor shall put a fair valuation on the remainder of the lands contained in such descriptive list; and shall enter such valuation and shall calculate the taxes upon such descriptive list and return the same to the State auditor, who shall thereupon, and annually thereafter until such land is redeemed or recovered, or sold by the State, without further assessments, add the amount of the taxes so assessed on such valuation to the amount for which the lands were sold, and such proceedings shall have the effect of a due assessment of taxes against said lands. The assessor shall furnish to the judge of probate a copy of the list returned to the State auditor, and it shall be the duty of the judge of probate to enter the taxes therein calculated on the record of sale thereof kept in his office."

It will be seen that where property is sold for taxes and purchased by the State, the county tax assessor shall put a fair valuation on such lands, and calculate the taxes thereon and return the same to the State Auditor who shall annually thereafter until such lands are redeemed or recovered or sold by the State, add the amount of taxes so assessed on such valuation to the amount for which the lands were sold, and such proceedings shall have the effect of a due assessment of taxes against said lands.

Applying this section to your case, it is clear, in my opinion, that after the lands were sold for taxes for the tax assessing year beginning October 1, 1929, the tax assessor should put a fair valuation on the lands, calculate the taxes on same and return to the State Auditor, and the State Auditor should thereafter, to-wit: October 1, 1930 and October 1, 1931 add

the amount of taxes so assessed to the amount for which they were sold, and upon redemption these amounts should be paid.

Section 3110 provides that the party desiring to make redemption shall deposit with the judge of probate the amount of money for which the lands were sold, with interest thereon at the rate of fifteen per cent per annum, from the date of sale, together with the amount of all taxes due on such lands since the date of sale, including the current tax assessing year, with interest thereon, etc. The amount of all taxes since the date of sale is determined as above set out by said Section 269, Acts 1919, p. 282.

It is, therefore, my opinion that you have pursued the proper method of computing the amount to be paid upon redemption of this property. I am presuming that your calculations are correct, and made in accordance with the provisions of law above set out.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 15, 1931

The Board of Review,
Escambia County,
Brewton, Alabama.

Courts of County Commissioners and Boards of Revenue may retain or employ attorneys, when it is deemed advisable or necessary.—Subsection 8 of Section 5498 of Code of Alabama.

Said Subsection 8 is not repealed either specifically or by implication by Section 64 of Act No. 172 approved August 22nd, 1923.

Opinion by Assistant Attorney General Evans.

Gentlemen:

Receipt of your letter of October 9, 1931, is acknowledged. You make the following statement of facts:

A number of large taxpayers of Escambia County have appealed from the valuations fixed on their property by the Board of Review to the Circuit Court. You ask my opinion as to whether or not, in such cases, the Court of County Commissioners or Board of Revenue may retain or employ attorneys, when it is deemed advisable or necessary, and the agreed compensation to them be paid as provided by Subsection 8 of Section 5498 of the Code of Alabama.

In reply will say that said Subsection reads as follows:

"All county solicitors, all circuit solicitors, and any solicitor of any court of record, shall give every county official opinions in writing on all matters connected with their respective offices except in suits against official's bonds. But courts of county commissioners or boards of revenue may retain or employ attorneys, when it is deemed advisable or necessary, and the agreed compensation to them may be paid as are claims to grand and petit jurors."

It clearly appears that the Court of County Commissioners or Board of Revenue, when it is deemed by it advisable or necessary, has such power, unless this power has been taken from it by a subsequent act of the Legislature. Section 64 of Act No. 172, approved August 22, 1923, which is a subsequent Act, reads as follows:

"Section 64. The Circuit and county solicitors, together with any special counsel employed by the State Tax Commission, with the approval of the Governor, shall represent the State and county in all tax cases appealed to the circuit court. The circuit and deputy solicitors are prohibited from representing taxpayers in any controversy between such taxpayer and the State or county."

This Act does not specifically repeal any part of said Subsection 8. Does it repeal the last sentence of said Subsection by implication? In my opinion it does not. The repeal of statutes by implication is not favored, and is never allowed when a reasonable field of operation can by any fair construction be found for each statute.—Encyclopedic Digest of Alabama Reports, Vol. 11, page 1102, Section 5. In my opinion, it was not the legislative intent to take from the Court of County Commissioners the power conferred by Subsection 8 of Section 5498 of the Code, but to add additional duties to the Circuit and County Solicitors and give additional authority to the State Tax Commission.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 20, 1931

Hon. B. M. Miller,
Governor of Alabama,
CAPITOL.

Conviction and sentence to Federal Penitentiary vacates office of Sheriff.

Opinion by the Attorney General.

My Dear Governor:

I have before me your request for opinion of date of October 19, 1931.

You state that the sheriff of Colbert County has been convicted in the District Court of the United States of the offense of conspiracy to violate the prohibition law and has been sentenced to two years in the Federal Penitentiary. You also state that sentence has been passed by Judge Grubb, and that the Sheriff has taken an appeal to the Circuit Court of Appeals and has given bond. Your letter discloses that the offense of which the Sheriff was convicted was committed prior to the time he was elected Sheriff and prior to the time that he assumed the duties of his office, but since assuming the duties of his office he has been tried and convicted. Section 2699 of the Code of 1923 provides that when any person holding any official place under authority of this State is sentenced by any Court of the United States, or of any state, to imprisonment in the penitentiary, his office or place is vacated from the time of his sentence; and if the judgment is reversed he must be restored, but if pardoned, he must not.

You inquire whether or not the Section of the Code above referred to operates to cause a vacancy in the office of Sheriff of Colbert County.

Section 60 of the Constitution of 1901 provides that no person convicted of embezzlement of the public money, bribery, perjury, or other infamous crime shall be eligible or capable of holding any office of trust or profit in this State.

Section 2575 of the Code of 1923, Subdivision 3, provides, inter alia, that the person who has been convicted of any crime punishable by imprisonment in the penitentiary of the State or the Federal Penitentiary is ineligible to hold office under authority of this State. Unquestionably the office of Sheriff of Colbert County is an office held under the authority of the State.

Section 2575 of the Code above referred to is obviously in harmony with Section 60 of the Constitution of 1901 in view of the decision in the case of Stone vs. Freeland, 104 So. (Ala.) pages 892, 894, and 895.

It may be true that the offense of conspiracy to violate the prohibition law of which the Sheriff of Colbert County was convicted is an offense malem inprohibita, nevertheless it is an offense punishable as a felony and one upon conviction may be sentenced to the Federal Penitentiary as in the instant case.

The Court in the Stone case cited supra, has given effect to Section 2699 of the Code, its constitutionality has been directly upheld. The opinion by Mr. Justice Gardner in the Stone case recognizes the conviction of one of homicide as such a crime, in view of the fact that the defendant was sentenced to the penitentiary, as would vacate the county office which

he held and from which he could not be removed under Sections 175 and 123 otherwise than by impeachment. The effect of the legislative Act, that is Section 2699, of the Code, has not or was not restricted in its field of operation to a vacation of the offices of those convicted of "infamous crimes" of the nature of perjury, bribery, and embezzlement of public funds in harmonizing the above mentioned Section with Section 60 of the Constitution, nor in giving effect to the said Section in view of Sections 173 and 175 of the Constitution of 1901.

I can recognize no distinction in the effect of the operation of this statute on officers whose office may be abolished by the Legislature and constitutional officers in view of the fact that the same provision is made in Sections 173 and 175 of the Constitution for the removal of officers whose office may be abolished by the Legislature as is made for the removal of those whose office is created by the Constitution and cannot be abolished by the Legislature.

In the Stone case the person whose office was declared vacated by his conviction, was convicted of a homicide. He might have been convicted of manslaughter in the second degree, an offence not punishable by imprisonment in the penitentiary. He was, however, convicted of murder. It cannot be seriously contended that an application of the doctrine ejusdem generis would classify a homicide as a crime of the same nature as perjury, embezzlement and bribery, those crimes which Section 60 of the Constitution make one incapable of, and ineligible to, hold public office.

It is very evident that the Supreme Court of this State has held that the spirit of Section 60 of the Constitution is carried out by a provision of statute to the effect that one convicted of a felony and sentenced to the Federal or State Penitentiaries should vacate an office which he would have been eligible to hold in light of said Section of the Constitution, as construed by the Supreme Court, had such conviction occurred prior to his induction into office.

It is very clear from a consideration of Section 2699 and the provisions that the officer convicted and sentenced to the penitentiary should be restored to office in the event his case was reversed, presupposed that an appeal would be taken, consequently the fact that in the instant case an appeal has been taken does not alter the situation. I am of the opinion that the office is vacant by operation of statutes enacted pursuant to the spirit of the Constitution.

Ex parte Diggs, 50 Ala. page 78.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 22, 1931

Hon. E. J. Garrison,
Judge of Probate,
Ashland, Clay Co., Ala.

Schools—Commissioners Courts making appropriations for support of public schools of county—Act No. 602—H. 751—Parker, Section 2 of said Act, approved August 4, 1931, unconstitutional. Section 1 construed.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of September 14, 1931. You call attention to the foregoing Act. You state you have an application from some citizens who signed a note last year in order to secure funds to build a school building, in which application they want the commissioners court to pay something on their obligation, or indebtedness, which was incurred solely and only for construction of the school building.

You request my opinion:

"Is the Commissioners Court authorized to honor this application?"

In answer will say no. The Act referred to reads as follows:

"AN ACT

"To authorize appropriations for the support of the Public Schools out of funds in County Treasury, by the governing body of the several Counties.

"BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

"Section 1. The Courts of County Commisioners or Boards of Revenue of the several counties of Alabama are hereby authorized at any meeting of said Court in any Calendar year to appropriate any funds of the County Treasury for the support of the Public Schools within said County.

"Section 2. Any appropriations heretofore made by a Court of County Commissioners or Board of Revenue or other like governing body of any funds for the support of the Public Schools of said County are hereby ratified.

"Section 3. All laws and parts of laws in conflict herewith are hereby repealed.

"Section 4. If any Section of this Act shall be held to be invalid by any Court such holding shall not affect any other Section which is not in and of itself unconstitutional.

"Approved August 4, 1931."

Section one of the Act authorizes appropriations by the commissioners court out of county general funds "for the support of the public schools of the county." This section does not contemplate appropriations for erection, repair, and equipment of public schools, but only to aid in the conduct of them as already existant, running institutions. The purpose of the Section was to authorize appropriations toward for instance paying the salaries of teachers engaged in teaching in such schools. "Erection," "Repair," "Equipment," "Maintenance," and "Support" are words which are each used with well defined meanings in Alabama School Code, 1927, and other educational laws and it must be presumed that the Legislature used the word "support" here with full knowledge of the distinction it had drawn in its own previous acts.

Furthermore, Section one of the Act can have no application to payment of any debt or obligation incurred or created by private individuals. Furthermore, I think that Section one was intended to operate in future and not as a means to paying up past debts. Appropriations by such commissioners courts in any event would have to be made to the proper educational board for the use of the school or schools, designating the use.

Section two of the Act is unconstitutional, first because violative of Section 45, Constitution in that it covers a subject not set forth in the title nor properly referable hereto; second because violative of Section 100, Constitution in that it attempts to "release" an obligation on the part of public officers who have heretofore illegally disbursed public money. There was no law authorizing such appropriations generally, as are mentioned in Section two, prior to August 4, 1931. If prior to that date an appropriation were made for such purpose, and warrant drawn therefor on the general fund of the county, clearly such act was without even the color of authority of law, and the County Treasurer would have been liable on his official bond therefor.

The minute that the Treasurer honored such a warrant, there arose an "obligation" on his part to the county to reimburse the county. The amount so illegally expended became that moment an "obligation or liability," "held or owned" by the county which the Legislature could not remit, release, postpone, diminish, or extinguish except by full repayment thereof by the defaulting officer. If, for instance, a warrant for such purpose had been illegally issued and paid and an Examiner of Accounts had thereafter checked the officer's accounts and charged him with the illegal expenditure surely it could not be said that a bill for the officer's relief would have been exempt from the provisions of Section 100, and if suit had then been instituted for recovery, surely the Legislature could not have taken away the cause of action. (See Sec. 95, Constitution).

I believe the foregoing will answer fully your inquiry and furnish you with sufficient information concerning the Act for your guidance.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 26, 1931

Hon. R. L. Shamblin,
Sheriff, Tuscaloosa County,
Tuscaloosa, Alabama.

Prisons and Prisoners—Removal of prisoner from county jail to state penitentiary for safe-keeping prior to conviction—no authority for such removal and no fee provided therefor.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of October 12, 1931 in which you state you had a prisoner in your county—I presume in your county jail—and on the order of "the judge" you removed him to Kilby State Prison for safe-keeping when a mob began to form.

You request my opinion:

"Who is liable for this removal bill and who will be liable for bringing the prisoner back?"

In answer, will state there is no authority of law for the judge of any court to order a prisoner removed from the county jail to the State penitentiary for safe-keeping. The commitment must be to the "nearest sufficient jail." A "penitentiary" is not a "jail," as it clearly appears from an examination of Sections 3741, 4801, 4802, 4804, 4810, 4811, 4812, 4813, 4814, 4816, 4817, and 4861, that the words "jail" and "penitentiary" are not used interchangeably. There having been no authority for the removal, and Section 3741 having application only to removals from one jail to another **jail**, there is no fee allowable to you.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 26, 1931

Hon. S. H. Blan,
State Treasurer,
CAPITOL.

Attorneys—Disabled veterans entitled to exemption from payment of State License Fees.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I am in receipt of your letter of October 1, 1931 in which you request my opinion as to whether or not a disabled war veteran is exempt from payment of State Lawyers License Fees.

I am of the opinion that your question should be answered in the affirmative. An Act approved July 2, 1931 (H. B. 833) provides that disabled veterans, as defined in said act, are exempt from one occupational license fee up to $25.00 for the State, $25.00 for the County, and $25.00 for the municipality.

Section 6230, Code of Alabama, 1923, specifically refers to license fees. Said section was amended by an Act approved June 6, 1931 (S. B. 85), but was not materially changed.

I am of the opinion that the act exempting disabled war veterans from the payment of occupational license includes the lawyers' license fee that is payable to the State as provided for by Section 6230, Code of Alabama, 1923, as amended by Act approved June 6, 1931 (S. B. 85), although part of said fee goes to the State Bar Association.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 26, 1931

Hon. A. G. Teague,
Circuit Clerk,
Ashville, St. Clair Co., Ala.

Court Costs—County Court costs, Fees of Judge of Court.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of September 26, 1931. You call attention to the

trial tax law (Section 4½, Rev. Act 1919), and to an opinion of this office dealing with same.—Opinions Attorney General, 1928-30, page 285.

You request an opinion:

Is the County Court cost taxable as a trial tax as in Circuit Court?

You refer to the fees of the Judge as set forth in first and fourth items under Section 3758, Code.

The ruling with reference to the trial tax has no bearing whatever on your enquiry. In a trial before the County Court where the Judge of the County Court has taken the affidavit and issued the warrant of arrest and the defendant is convicted there is to be taxed on conviction under the law as provided in Section 3758, Code of 1923, in addition to fees of clerks, sheriffs, solicitor and witness the items of—

For taking affidavit of complaint and issuing warrant of arrest .. $1.00

For trial, entering judgment and when an appeal is taken, approving bond and certifying proceedings $5.00

These items of cost **belong to the county** when collected and are to be paid into the county treasury.

Where no conviction is had these two items are of no consideration for, **belonging**, as they do, **to the county**, there is no provision of law for their payment from the fine and forfeiture fund. Claims against the fine and forfeiture fund are governed by Sections 3740, 3764, and 4039, Code of Alabama, 1923.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 26, 1931

Hon. John H. Daniel,
Circuit Clerk, Pickens County,
Carrollton, Alabama.

1st. County Courts have no jurisdiction in preliminary hearings.

2nd. Witness fees on preliminary hearing are the same in all Courts no matter who the magistrate may be.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of October 8th, 1931 in which you request my opinion as follows:

> "Are State witnesses subpoenaed before the County Court on preliminary hearing entitled to the same per diem and mileage as State witnesses in cases where the County Court has final jurisdiction?"

In answer to your inquiry will state first, that the County Court is without jurisdiction in preliminary hearings. Cases of this character are only triable before magistrates.

See Section 5218, Code of Alabama, 1923, which is as follows:

> "Plaintiff examined on oath; depositions reduced to writing, and subscribed.—Upon a complaint being made to any one of the magistrates specified in Section 5136 (7519) that such offense has, in the opinion of the complainant, been committed, the magistrate must examine the complainant and such witnesses as he may propose, on oath, take their depositions in writing, and cause them to be subscribed by the person making them."

You will note further by examining Section 5136, Code of Alabama, 1923, who are designated as magistrates. This Section reads as follows:

> "Who are magistrates; authority to bond over to keep the peace.—The judges of the appellate and circuit courts, and courts of like jurisdiction, throughout the state, the judges of probate, the judges of the county courts, judges of inferior courts, and justices of the peace, in their respective counties; and the mayor or chief officer of any incorporated town or city, within the limits of their respective corporations, are magistrates within the meaning of this chapter, and authorized to require persons to give security to keep the peace in the manner provided in the next article."

You will note the judges of the county courts are named and suggested in the above Section as magistrates. Therefore, in hearing a preliminary proceeding, he does not sit as a Judge of the County Court, but only as a committing magistrate and the costs in such cases before him as such magistrate is the same as when being heard by any other magistrate named in Section 5136, supra.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 26, 1931

Hon. A. B. McDowell,
Tax Assessor, Geneva County.
Geneva, Alabama.

1. Automobile purchased between October 1, 1931, and April 1, 1932, must be assessed for taxation but taxes thereon are not payable at the time of such assessment, there being no taxes due for the preceding year.

2. Section 3048, Code of Alabama, 1923, provides for payment of commission of Tax Assessor.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of October 9th in which you make the following inquiry:

"1st. Should tax be collected on a new car when purchased from the dealer new between the period of October 1st and April 1st.

"2nd. Should the Tax Collector pay to the Assessor his commission on automobiles each month when he makes his settlement with the State and County."

Your first question is not exactly clear to me. If you mean the automobile was purchased between October 1st, 1930, and April 1st, 1931, then tax on the same should be collected at the time the new assessment and tag is secured in 1931. If you mean the automobile was purchased new between October 1st, 1931, and April 1st, 1932, it is necessary that the same be assessed by the Tax Assessor and that he give a certificate showing that no ad valorem taxes are due on the same for the preceding year and thereupon the owner can secure a license tag from the Probate Judge, and no tax will be payable in 1931 on such automobile so acquired.

In answer to your second question I advise that the payment by the Tax Collector to the Tax Assessor of commissions is provided for by Section 3048 of the Code of 1923. which appears in the Revenue Compilation of 1929 as Section 204.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 26, 1931

Hon. L. W. Price,
Judge of Probate,
Evergreen, Conecuh County, Ala.

Mittimus—How issued by Justice of the Peace.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of September 5, 1931, in which you request my opinion as follows:

"Please furnish me with an opinion as early as possible as to the following question:

"When a person is confined in a county jail on several different charges, should the committing magistrate furnish the sheriff a mittimus for each charge or should one mittimus be sufficient to cover all the charges?"

It is my opinion the committing magistrate should furnish the sheriff with a mittimus in each case. Section 5238, Code of Alabama, 1923, provides that where a commitment is made, that the defendant must be committed to jail by an order in writing. Therefore, it is my opinion the proper method would be for each offense charged there should be a commitment or mittimus issued to the sheriff or jailer of the county.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 26, 1931

Mrs. Mamie P. Searcy,
Registrar, Butler County,
Greenville, Alabama.

Registrars—Term of office.

Opinion by Assistant Attorney General Haynes.

Dear Mrs. Searcy:

I have your letter of October 3, 1931, in which you state:

"Will you kindly send me a ruling on the following matter: Mr. Stallings, whom, I have succeeded advises me that his commission does

not expire until January 1, 1932. I was under the impression that my duties would begin as registrar as soon as I received my commission."

Registrars serve at the will of the appointing board. They may be removed at any time for or without cause. If they are not removed they serve for four years. The term of office of the old board, that is the one appointed in October, 1927, expired September 30, 1931. Evidently Mr. Stallings' term expired at that time, if he was serving a full term or just filling out an unexpired term.

See Sections 371, 372, Code of Alabama, 1923.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 26, 1931

Hon. W. C. Beebe, Attorney,
County Commission of Baldwin County,
Bay Minette, Alabama.

Sheriff's long distance telephone calls—when and how payable.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of October 9, 1931, in which you request my opinion as to the sheriff's use of long distance telephone calls in connection with his office, and your requests are as follows:

"First: Calls to and from the Sheriff incident and proper in transferring insane persons from the County to the Insane Hospitals.

"Second: Calls by the Sheriff, under the direction and order of the Court, to jurymen, witnesses and others summoned to appear at Circuit Court, but who do not appear and who are called in lieu of issuance and service of attachment of capias.

"Third: Calls to and from the Sheriff to his local deputies with reference to the service of writs of arrest, summons of witnesses in criminal cases, summons of jurymen in criminal cases, and of other persons summoned to appear before the Circuit Court or the Grand Jury.

"Fourth: Calls to and from the Sheriff with reference to summoning witnesses before the Grand Jury, such calls made by the Sher-

iff or received by the Sheriff, upon the order of the Solicitor, in lieu of issuance and service of subpoenaes or attachments.

"Fifth: Calls to and from the Sheriff's local deputies with reference to the service of complaints and other process in civil cases, and the service of witnesses and jurymen in civil cases.

"Sixth: Calls to the Sheriff by private individuals complaining or reporting the violation of law and asking for investigations. And calls from the Sheriff to private individuals with reference to the reported crimes and the service of civil and criminal summons and writs."

I am enclosing you an opinion of this office written to Hon. G. H. Howard, Judge of Probate, Elmore County, dated February 25, 1927, Biennial Report of Attorney General, 1926-28, p. 127, which answers your inquiries from one to five, inclusive, as nearly as they can be answered. The Commissioners Court should scrutinize all such claims, and be convinced that such calls were connected purely with the official duties of the officer and were necessary, and should never be allowed unless itemized statement is filed with the Commissioners Court, showing the dates of such calls, from whom and to whom, and the amount.

Answering your sixth request, certainly a claim of this character should not be allowed. If allowed there would be no end to the abuse that would naturally follow.

The only authority for furnishing the sheriff's telephone is found in subsection 16 of Section 6755, Code of Alabama, 1923, which is as follows:

"16. To procure and provide telephones for the offices of the circuit judge, the clerk and register of the circuit court, the offices of the sheriff and jailer, tax assessor and tax collector, and the judge of probate in their respective counties, and to pay for the same out of the general funds of the county; and said court of county commissioners or board of revenue, or like body may, in like manner and for the same officer, establish telephones in both courthouses where the said officers maintain two offices in the county; and must install such telephone upon the request of the officer entitled thereto."

It is my opinion that officers making use of their phones for long distance calls, should only do so in cases where the facts and circumstances demand such action, and should only resort to the use of the telephone for long distance messages where, in their sound judgment, the facts of the case demand.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 26, 1931

Hon. Wm. F. Feagin, Director,
State Board of Administration,
CAPITOL.

Prisons and Prisoners:

—Commission of persons to State penitentiaries for safe keeping prior to conviction.

—Matters relating to persons committed to State penitentiaries for safe keeping prior to conviction.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of October 8, 1931. In it you request my opinion:

"1. Under what authority persons may be committed to the State prison for safe keeping pending trial?

"2. Who has the authority to commit such persons for safe keeping, and what form of commitment papers should be demanded by the Warden before receiving such persons for safe keeping pending trial?

"3. Under what authority may a Warden release such persons, to whom, and what form of release papers should be demanded by the Warden?

"4. If such persons can be legally committed to a State Prison, from what funds should the expense of food, clothing, medical attention, etc., be paid?

"5. If persons can be legally committed to a State Prison for safe keeping pending trial, should prisoners regulation uniform be used for clothing?

"6. Can such persons be employed during incarceration?

"7. Should such persons so incarcerated be permitted to mingle and eat with regular prison population, or should they be fed and detained separate and apart?"

In answer to your first question, will state that, except as provided in Section 4861, Code of Alabama, 1923, there is no authority of law to commit a person to the State penitentiary pending trial. Section 4861 provides that the State Prison Inspector may designate the State penitentiary as the most suitable place to which to remove prisoners then confined in

a jail that does not meet the lawful requirements of the Inspector where the number exceeds one hundred.

From the tenor of your enquiries, it does not appear that you are presently concerned with the operation of Section 4861. A careful reading of Articles 1 and 4, Chapter 168, Code of Alabama, 1923 shows that there is a clear distinction between a "jail" and a "penitentiary" or "state prison."

Since there is no authority generally for the commission of a prisoner to the State penitentiary for safe-keeping pending trial, answers to the remainder of your questions are not necessary.

Sections 4802, 4804, 4810, 4811, 4814, 4816, 4821, 4861, 3741, Code of Alabama, 1923.

Corpus Juris, "Jail."

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 26, 1931

Hon. O. L. Haynes, Secretary,
Ala. Real Estate Commission,
CAPITOL.

Rules and Regulations—Alabama Real Estate Commission.

Alabama Real Estate Commission—No power to prescribe civil penalty for violation of rules—no power.

Granting days of grace to licensee unauthorized.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of October 6, 1931. In it you call attention to that portion of Section V of an Act approved August 27, 1927, creating the Alabama Real Estate Commission, which reads as follows:

"The Commission is expressly vested with the power and authority to make and enforce any and all such reasonable rules and regulations connected with the application for any license as shall be deemed necessary to administer and enforce the provisions of this Act. All such rules and regulations to be subject to the approval of the Governor."

You request my opinion:

"1. Has the Commission authority under said act to prescribe a penalty for those licensees who are delinquent in renewing their applications for barber's or salesmen's license?

"2. The expiration of all licenses under the commission being September 30, has the commission authority to grant a 'grace period' beyond the expiration date?"

The answer to both of your questions is in the negative. In answering in the negative your first question I wish to call attention to the fact that by Section XII of the Act, the Legislature has expressed the intention that the criminal penalty set forth therein should be exclusive of all others. No direct provision was made for the exaction of civil punitory liability for violation of any rule or regulation which the commission might make.

The general power of imposing punishment for wrongs or neglects is a legislative function and this is true whether the punishment is to be imposed by the infliction of a criminal penalty or of a civil punitory liability. In such instances the power to prescribe the penalty is a legislative function, which cannot be delegated away. The exception to the general rule is only where the determination of what would be a just and reasonable civil penalty depends upon a consideration of so much data or of so many details and exigencies that the legislature could not intelligently and justly fix the amount of the penalty without further inquiry and investigation than is expedient in the ordinary cause of the passage of legislation. In such a case the legislature may, in general terms, declare the punishableness of the thing to be penalized, and leave to an administrative body or officer the ascertainment and declaration of what the amount of the penalty should be. This exception to the general rule does not fit your particular case.

The power given to the commission in the instant case to "enforce" its rules does not, in my opinion, give it the right to exact a monetary penalty for disobedience. I believe the rule is clearly stated in **Zuber vs. Southern Ry. Co. (Ga.)**, 71 S. E. 937, et seq., and on authority of that case the opinion of February 8, 1929 (Opinions Attorney General, 1928-30, p. 174) is modified to the extent herein stated.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 26, 1931

State Tax Commission,
CAPITOL.

1. House Bill 111 by McNeel held constitutional.

2. The exception of place of business at which the principal business conducted is that of selling or distributing petroleum products, held invalid.

3. Person taking out license to sell a particular thing and who engages in no other business held not liable for store license.

4. Ice manufacturer who pays license as such held not liable for store license on his ice factory.

5. So-called relay station where ice is not manufactured but is sold, held subject to the store license.

Opinion by Assistant Attorney General Moore.

Gentlemen:

I have your several letters with reference to the so-called Chain Store Act, House Bill 111, approved July 7, 1931. The letters in particular being under date of September 12th, a second letter under same date, and one under date of September 24th.

In your first letter you state:

"The term 'store' as used in this Act shall not be construed to mean or include any **place of business** at which the principal business conducted is that of selling or distributing petroleum products."

You ask me to advise you as follows:

"(1) Is this exemption discriminating in favor of filling stations, to which it is particularly designed to apply, constitutional?

"(2) You will note that the exemption is to the 'place' of business, and hence it would appear not only to exempt a filling station but would appear also to continue to exempt such filling station if it sold other things, such as soft drinks, sandwiches, etc. In other words, apparently we could not claim a store or chain store license from a filling station except in cases where the sale of gasoline and oils was not the principal business."

The first question to which this office should address itself and which is raised incidentally by the foregoing request, is the constitutionality of the Act as a whole.

The Act in my opinion is clearly a privilege tax and hence is not violative of Sectios 211 and 217 of the Constitution of 1901.

Phoenix Company vs. State, 118 Ala. 143,
Goldsmith vs. Huntsville, 120 Ala. 182,
State vs. Parker, 5 Ala. App. 231.

Taxation is an inherent power of sovereignty. State Constitutions are not grants but limits on the power of the Legislature. In general the Legislature can do whatever is not forbidden by the Constitution either expressly or by necessary implication. Hence in the matter of license or privilege taxes, the Legislature can make such classifications as it sees fit; the only restriction upon its powers are that the classification shall be not purely arbitrary and that the tax shall bear equally on all persons in the same class.

State vs. Alabama Fuel and Iron Company, 188 Ala. 487, 66 So. 169.

"The rule of uniformity does not require that all subjects be taxed nor taxed alike. The requirement is complied with when the tax is levied equally and uniformly on all subjects of the same class and kind. It extends to the class upon which the tax shall operate. Different occupations may be taxed at different rates, and some may be altogether exempt; and the requirement of uniformity is not infringed if the various classifications include all occupations, similarly circumstanced and of the same kind."

Western Union Telegraph Co. vs. State Board, 80 Ala. 273, 280.

It is my opinion that the classification of stores on chain basis as provided for in said Act for the purpose of license taxation is not an unreasonable classification and is one well within the power of the Legislature to enact.

It is therefore my opinion that the Act as a whole is not in conflict with the Constitution of Alabama. In this conclusion I am influenced by the decision of the United States Supreme Court in the recent case of State Board of Tax Commissioners of Indiana vs. Jackson, decided May 18, 1931. (See Advance Sheets Supreme Court Reporter, Vol. 51, No. 14, at page 540). The Court in determining that the Indiana Statute is not violative of the 14th Amendment to the Federal Constitution, among other things said:

"The appellants produced evidence to prove that there are many points of difference between chain stores and independently owned units. These consist in quantity buying, which involves the application of the mass process to distribution, comparable to the mass method used in production; buying for cash and obtaining the advantage of a cash discount; skill in buying, so as not to over-buy, and at the same time keep the stores stocked with products suitable in size, style, and quality for the neighborhood customers who patronize them; warehousing of goods and distributing from a single warehouse to numerous stores; abundant supply of capital, whereby advantage may be taken of opportunities for establishment of new units; a pricing and sales policy different from that of the individual store, involving slightly lower prices; a greater turnover, and constant analy-

sis of the turnover to ascertain relative profits on varying items; unified and therefore cheaper and better advertising for the entire chain in a given locality; standard forms of display for the promotion of sales; superior management and method; concentration of management in the special lines of goods handled by the chain; special accounting methods, standardization of store management, sales policies, and goods sold.

"The appellants' evidence indicated that all of these advantages are interrelated and interdependent in the chain store business. The witnesses conceded that some of them may be found in large independent grocery or drug stores or the like, but they did not, as appellee claims, state that all of them combined exist therein as in chain stores.

"The record shows that the chain store has many features and advantages which definitely distinguish it from the individual store dealing in the same commodities. With respect to associations of individual stores for purposes of co-operative buying, exchange of ideas as to advertising, sales methods, etc., it need only be remarked that these are voluntary groups, and that series of independent units cannot, in the nature of things, be as efficiently and successfully integrated as a chain under a single ownership and management."

"In view of the numerous distinctions above pointed out between the business of a chain store and other types of stores, we cannot pronounce the classification made by the statute to be arbitrary and unreasonable. That there are differences and advantages in favor of the chain store is shown by the number of such chains established and by their astonishing growth. More and more persons, like the appellee, have found advantages in this method of merchandising and have therefore adopted it. What was said in Metropolis Theatre Co. v. Chicago, supra, is quite applicable here:

"'* * * The distinction obtains in every large city of the country. The reason for it must therefore be substantial; and if it be so universal in the practice of the business, it would seem not unreasonable if it be adopted as the basis of governmental action."

"The court below fell into error of assuming that the distinction between the appellee's business and that of the other sorts of stores mentioned was solely one of ownership. It disregarded the differences shown by the record. They consist not merely in ownership, but in organization, management, and type of business transacted. The statute treats upon a similar basis all owners of chain stores similarly situated. In the light of what we have said, this is all that the Constitution requires."

The statutes of Indiana and Alabama are substantially the same and the principle laid down by the United States Supreme Court would, in my opinion, apply as to the Act before us.

The difference in the amount in my opinion, would not affect the validity of the tax. "The Legislature having the legal right to impose a privilege tax, the amount of the imposition is a matter within its discretion."

Dunlap vs. State, 78 So. 638.

Your question in your first letter of September 12th is directed particularly at that portion of Section 8 which attempts to exclude from the definition of the word " 'store' any place of business at which the principal business conducted is that of selling or distributing petroleum products." It is my opinion that this attempted exclusion or exemption of a place of business at which the principal business conducted is selling or distributing petroleum products is unconstitutional and invalid. It arbitrarily attempts to exclude from the operation of the law a part of a class without any reasonable basis for such exemption or exclusion. The burden of taxation must bear equally on all persons in the same class and the Legislature cannot legally bestow special favors on a part of the class.

McClendon vs. State, 60 So. 392,
McClendon vs. State, 60 So. 406.

This holding, however, does not affect the constitutionality of the Act as a whole in my judgment. Its only effect is to invalidate the attempted exception. The Legislature in the lines next following the foregoing quoted exception declared that its invalidity should not affect the remainder of the Act and also had a general similar clause at the end of the Act. Under the authority of McClendon vs. State, supra, and the expressed intent of the Legislature, it is my opinion that the invalidity of this Section does not affect any other portion of the Act.

In your second letter of September 12th you ask:

"(1) A man has a soft drink stand, selling nothing but soft drinks in bottles and pays the license required by law for the sale of bottled soft drinks. Can this man be required to pay the chain store license (House Bill 111)?

"(2) A man has a place of business at which he sells only soft drinks, sandwiches, cigarettes and cigars and this man takes out a separate license required by law for dealers in soft drinks, lunch stands, cigarettes and cigars. Can this man be required to take out the chain store license in addition to the licenses which the law specifically levies for the kind of business engaged in?"

These inquiries are in effect the same, to-wit: Can a person selling only an article or articles for which a special license has been paid be required to pay the store license in addition thereto.

A store is defined in Section 8 of the Act as follows:

> "The term 'store' as used in this Act shall be construed to mean and include any store or stores or any mercantile establishment or establishments which are owned, operated, maintained or controlled by the same person, firm, corporation, copartnership or association, either domestic or foreign, in which goods, wares or merchandise of any kind, are sold, either at retail or wholesale. The term 'store' as used in this Act shall not be construed to mean or include any place of business at which the principal business conducted is that of selling or distributing petroleum products; provided, however, that if this exception should be held unconstitutional, such holding shall not affect the remaining portions of this Act."

As the first corollary of your inquiry, it is clear that if the store sells any article whatsoever for which a special license is not paid then there is liability for the store license, irrespective of what kind, or how many special licenses may be paid for selling or dealing in the goods, wares and merchandise therein.

Does the payment of special license relieve the person "operating, maintaining, opening or establishing the store" from the payment of store license?

A tax statute is a penal statute and must be strictly construed. The various Acts requiring licenses on particular businesses or occupations were enacted prior to the passage of the Chain Store Act. The Legislature could have by appropriate expression, have provided that the store license was in addition to other licenses or privilege taxes, but this it failed to do. Is requiring a license for the operation of a store in which a specially licensed article and it alone is sold, for instance, cigars, the same privilege as selling the cigars in such store? The Legislature may have attempted to provide a license on stores as such regardless of the nature of the goods vended, or whether their sale is subject to a special license. But has it done so? Is not there a distinction without a difference? Are not the privileges in fact the same? If so, can the Legislature without special words so indicating be said to have intended that two licenses are required. I call your attention to the following authorities:

> "If a person carries on two or more distinct kinds of businesses he is taxable in respect to each; but a city cannot divide a single taxable privilege and require a separate license for each of the elements of right that accrue to citizens thereunder."
>
> Cooley on Taxation, 4th Edition, Vol. 4, Section 1684.

> "The business of selling liquor is not such a customarily inseparable and necessary element in the business of a wholesale grocer that will prevent the imposition of a separate and distinct license tax on each."

City of Mobile vs. Richards, 98 Ala. 594, 12 So. 793.

In City of Mobile vs. Craft & Co., 94 Ala. 150, it was held that the taking out of wholesale and retail grocer's license did not prevent the collection of a separate license for selling cigars.

In Morningstar vs. State, 135 Ala. 66, it was held that where one had taken out license as a pawn broker, he could sell pistols lawfully pawned to him without payment of the dealer's license for selling pistols.

> "It is the correct statement of the law to say that if the city revenue ordinance undertakes to curtail a privilege by constructing out of its constituent elements two separate taxable privileges; as if it imposes one tax to cover the wholesaling and retailing of goods, wares and merchandise, and another special and independent tax for the wholesaling of an article which necessarily belongs to the privilege of wholesaling and retailing, it has transcended its charter power and the provisions of the ordinance imposing such independent special tax upon the one element of the privilege are void."

Mefford vs. City Council of Sheffield, 41 So. 971.

In this case the ordinance provided that where two or more licenses might be payable the licensee should pay the higher, and the defendant was held liable for the higher license by virtue of this provision.

In Mayor of Tuscaloosa vs. Holozstein, 32 So. 1007, the City of Tuscaloosa had license taxes as follows: 1. On milliners; 2. On merchants selling millinery in addition to merchant's license; 3. On merchants. An attempt was made to compel the defendant to pay the license for selling millinery in addition to his merchant's license which had been paid. The Court after pointing out the difference between milliner and a person selling millinery said:

> "To hold that a merchant could be taxed as a milliner, merely because he keeps and sells articles of millinery would be to extend the authorization of this statute well beyond its fair and reasonable construction, and this in the teeth of the thoroughly established doctrine that such authorizations are to be strictly construed so that no taxes except such as are with reasonable certainty within the terms employed, shall be deemed to be authorized."

It was stated in Gambill vs. Endrich Bros. et al., 143 Ala. 506:

> "That the power to tax is never implied in this State and further that as a general rule, when a license to do a general business has been exacted and paid, another license cannot be required and collected for the doing of an act or series of acts constituting an integral part of such general business."

The Court decided that under the charter powers of the City of Birmingham regulating the liquor traffic a separate license on malt liquor dealers in addition to the wholesale liquor dealer's license could be charged, but based its ruling on the police powers of the city.

With the exception of the Morningstar case, supra, all of these were cases involving the power of municipalities and are not decisive on the point in question. Taxation is not an inherent power of municipalities and they possess only such powers as are given them by the Legislature or the Constitution. The State is not subject to the same rules and restrictions in the matter of taxation which apply to municipalities. They are, however, indicative of the Court's construction of similar questions.

However, taking into consideration these cases, the fact that a tax statute must be strictly construed, together with the Legislature's failure to provide that the store license is in addition to all other licenses, I am led to the conclusion that where a person takes out a license to do a particular thing at a particular place and performs no other Act, he is not in addition thereto required to take out the store license. The license to do a particular thing such as sell cigars necessarily contemplates a place to sell them. Shall he be charged a license on such place or store? In the absence of an expressed intention on the part of the Legislature to this effect, I do not think so.

I also am in receipt of your letter of September 22nd in which you state:

> "We are attaching hereto, copy of letter from Cabaniss & Johnston in reference to liability under the Chain Store Act. There are several questions suggested by the enclosed letter:
>
> "First—The question of the liability of the Birmingham Ice and Cold Storage Co., itself. This Company is an ice manufacturer and pays the license levied on ice factories. In talking this matter over with Judge Evans, of your office staff, a few days ago, we reached the conclusion that a manufacturer was not liable under the Chain Store Act provided such manufacturer sold his product from the factory in the customary way. Therefore, we have stated to Mr. Woodrow, Manager of the Birmingham Ice and Cold Storage Co., that in our opinion, this Company would not, itself, be liable for the chain store license. However, this statement of Mr. Woodrow was merely an opinion of the writer after the conversation with Judge Evans and we are submitting the matter to you for an opinion provided you hold differently to the opinion given Mr. Woodrow.
>
> "The next question suggested in Mr. Cabaniss' letter is in reference to the liability of the City Ice Delivery Co. We understand that this is a separate corporation, owned and controlled by the Birmingham Ice and Cold Storage Co. So far as we know the City Ice Delivery Co., does not manufacture ice at all and does not pay the

ice factory license. It is a company organization for the purpose of selling in the City of Birmingham a part of the products of the Birmingham Ice and Cold Storage Co. Mr. Cabaniss assumes that this Company would not be liable for the chain store license but we are inclined to believe that it would be liable.

"Third.—The principal question raised by Mr. Cabaniss is that of the liability of certain so-called relay stations. The nature of these stations is explained in Mr. Cabaniss' letter. You will notice that each of these stations is established for convenience in loading trucks operating over a part of the city more or less distant from the ice factory, and yet each of these stations actually sell ice at retail, such sales being made to the public generally from the stock carried at the relay stations. We have held that these relay stations are stores under the definitions in the so-called Chain Store Act."

With the principles and conclusions set out in the foregoing opinion, I am of the opinion in answer to your questions:

1. That the manufacturer is not liable for store license on his ice factory or factories, if he sells nothing else.

2. That there is liability for store license on the so-called relay stations under the facts set out by you whether the same are owned by the manufacturing company or its subsidiary.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 27, 1931

Hon. S. R. Butler,
State Tax Commissioner,
CAPITOL.

Act No. 369, approved July 7th, 1931, requires license of any person, firm, corporation, association or partnership, either foreign or domestic, in amount of one-half the yearly rate, to operate, maintain, open or establish any store in this State on or after October 1st, 1931, for the period of time from October 1st to December 31st, 1931.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of July 15th, 1931, came duly to hand. You ask for construction of Act No. 369, approved July 7th, 1931, prescribing license and filing fees for stores, as to whether or not it was the legislative purpose

and intent, in said Act, to have collected a half year's license tax for the operation of a store after July 1st, 1931.

In reply will say that after a careful reading and consideration of said Act, it is my opinion that it carries the legislative intent (and cannot, as a whole, be otherwise construed) of requiring for each store operated, maintained, or established on or after October 1st, 1931, a license for the balance of the calendar year 1931. The license, on the whole, is based on the calendar year. The Act was approved July 7th, 1931. The first Section of the Act reads as follows:

> "Section 1. That from and after the first day of October, 1931, it shall be unlawful for any person, firm, corporation, association or copartnership, either foreign or domestic, to operate, maintain, open or establish any store in this State without first having obtained a license so to do from the State Tax Commission, as hereinafter provided."

This clearly shows, in my opinion, that there was no legislative intent of licensing the operation, maintenance, opening or establishing any store prior to October 1st, 1931.

A store that went out of business prior to October 1st, 1931, was not due such license; but for a store operated, maintained, opened or established on, or after, October 1st, 1931, a license is due. The license for 1931 does not run from July 1st, 1931, to and including December 31st, but runs from October 1st, 1931.

Section 6 of said Act reads as follows:

> "Section 6. Each and every license issued prior to the first day of July of any year shall be charged for at the full rate, and each and every license issued on or after the first day of July of any year shall be charged for at one-half of the full rate, as prescribed in Section 5 of this Act."

It will be seen from the foregoing that the license covering the period from October 1st, 1931, to and including December 31st, 1931, is one-half the license for a full calendar year.

Section 13 of said Act reads as follows:

> "Section 13. This act, except Section 11, shall be in effect from and after the first day of October, 1931."

Section 11 of said Act, by its terms went into effect when approved for the purpose of providing money for preparing for the enforcement of the Act when it went into effect on October 1st, 1931.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 28, 1931

Hon. E. T. Bolding,
County Superintendent of Education,
Russellville, Alabama.

Schools—Renting of private property for school purposes, minor repairs and insurance thereon.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of October 24, 1931 in which you state that the Rockwood school building in your county burned and that it is possible for the County School Board to obtain temporary use of a church and another building.

You request my opinion as follows:

"1. Can the County Board of Education rent the above mentioned buildings for a term of six or seven months?

"2. Can the County Board of Education legally pay the insurance on said building or buildings out of the district tax or the county three mill tax?

"3. Can the County Board of Education legally pay for minor repairs on said building or buildings out of the district tax or the County three mill tax?

I am of the opinion that your first inquiry should be answered in the affirmative. Private property may be rented for school purposes under and by virtue of Section 132 of the School Code of 1927. Said section gives the County Board of Education the right to acquire, purchase, or by condemnation proceedings if necessary, lease, receive, hold, transmit and convey title to real and personal property for school purposes.

In answer to your second inquiry, I am of the opinion that the district three mill tax may be used for the purpose of insuring the property referred to above to the extent of the county's insurable interest, and only for the time said property is used for school purposes; and further said building must be used exclusively for the benefit of the school district that pays the tax.

Biennial Report Attorney General, 1926-28, p. 609,
Biennial Report Attorney General, 1928-30, p. 632.

I am of the opinion that your third question should also be answered in the affirmative. Minor repairs may be made on said property if same

do not amount to a permanent improvement, and a reasonable amount of the three mill county or district school tax may be used for this purpose.

Biennial Report Attorney General, 1928-30, p. 357.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 28, 1931

Hon. W. R. Jackson,
Judge of Probate,
Moulton, Lawrence Co., Ala.

Game Laws—Seasons on fox-hunting, license necessary.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of October 7, 1931. You seem to be under the impression that there are no open and closed seasons on foxes.

You request my opinion:

"Is it necessary for a person to have a hunting license to hunt foxes?"

In answer, will state that it is. It is necessary to have a hunting license to hunt any kind of game in Alabama.

Section 4199, Code of Alabama, 1923 (as amended by Acts 1923, p. 773).

Your attention is also invited to Section 4215 and Section 4216, Code of Alabama, 1923, as amended by said Act of September 29, 1923 (Acts 1923, p. 773). You will observe that it is unlawful to trap foxes between March 1 and September 1 each year (Section 4215) and that it is unlawful to take, capture, kill, destroy, or attempt to take, capture, kill, or destroy any fox, with dog and gun or dog or gun, from March 1 to September 1 following in each year. Therefore, your supposition that there is no open or closed season on foxes is erroneous.

The ordinary hunting licenses are the type used.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 28, 1931

Hon. G. H. Howard,
Judge of Probate,
Wetumpka, Elmore Co., Ala.

Advertising—Local Bills—payment for.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of October 19, 1931. You call attention to Act No. 275—H—385—Holland, approved June 18, 1931, which Act reads as follows:

"Section 1. That in the expense heretofore or hereafter incurred in the publication of the intention to introduce a local bill in the Alabama Legislature shall be paid, by the county affected thereby, out of the general funds of said county; provided that in counties having two judicial divisions, in each of which regular terms of circuit court are held, such publication may be made in both of such divisions at the expense of the county. "Provided that such Bills are introduced, passed and become law."

"Section 2. The provisions of this Act shall become effective immediately upon its approval by the Governor."

You state several local bills for Elmore County were advertised, introduced, passed and approved by the Governor.

You request my opinion:

"1. Is said constitutional?

"2. Is a county legally authorized to pay for advertising or publication of notice of intention to introduce local bills when same was done prior to date of approval of foregoing Act?

"3. Is a county legally authorized to pay for advertising or publication of notice of intention to introduce in the Legislature a local bill, independent of the provisions of the Act above quoted?"

In answer to your first question will state that I have examined the Journals of the House and Senate and find the Act was constitutionally passed. I know of no constitutional objection thereto.

In answer to your second question will say that subdivision 14 of Section 6755, Code of Alabama, authorized payment for such advertising. The Act passed June 18, 1931, supra, constitutes a limitation and substantial revision of that section. Prior to enactment of Act No. 275, the county could pay for advertising of a local bill whether same was passed and be-

came a law or not. Under the law as it existed prior to Act No. 275, it was not mandatory that a county pay for such advertising.

Under the Act No. 275 the expense of advertising is a charge against the **general** fund of the county; the publication may be in both divisions of a county having two judicial divisions; **but the expense of advertising is not a charge against a county unless the bill is introduced, is passed, and becomes a law.**

This Act must be read as an addition or amendment to sub-section 14 of Section 6755, Code of Alabama, 1923.

The foregoing will answer your third question also.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 28, 1931

Hon. E. L. McConnell,
Circuit Clerk, Lauderdale County,
Florence, Alabama.

1. Only one solicitor's fee, one trial tax and one stenographer's fee can be charged where two or more persons are jointly indicted and convicted for the same offense.

2. Where two or more persons are jointly indicted and tried for the same offense, one of them being acquitted, only one solicitor's fee, one trial tax and one stenographer's fee can be charged, and this should be proportioned among those convicted.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of October 12, 1931, in which you request my opinion as follows:

"(1) In cases where two or more defendants are tried jointly (no severance having been demanded) and the case is reported, should I assess the whole of the solicitor's fee for such offense, the whole of the trial tax and the whole of the stenographer's fee separately against each defendant, or in such case should there only be one solicitor's fee, one trial tax and one stenographer's fee assessed for the trial and, in case of conviction, the one fee in each case divided equally and each defendant's proportionate share assessed against such defendant.

"(2) If two or more defendants are jointly tried for a crime and if it is proper to charge only one solicitor's fee, one trial tax and one stenographer's fee for the joint trial, then in the event of the conviction of one of such defendants and the acquittal of all other defendants so jointly tried, should the one fee in each of the above cases be divided into as many parts as there were defendants and only the proportionate share of said fees assessed against the convicted defendant."

Answering your first inquiry, it is my opinion when several parties are indicted and tried jointly for an offense, and all are convicted, there should be charged as a part of the costs only one trial tax, one stenographer's fee and one solicitor's fee, which should be proportioned among those convicted.

Biennial Report Attorney General, 1926-28, p. 250.
Biennial Report Attorney General, 1926-28, p. 610.
Dent v. State, 48 Ala. 514.
Brown v. State, 46 Ala. 148.

The cases, supra, hold that only one solicitor's fee can be taxed in cases where two or more persons are jointly indicted and convicted for the same offense. In the case of Brown v. State, supra, it is said:

"On the conviction of several defendants on an indictment for disturbing religious worship but one solicitor's fee can be taxed against all of the defendants found guilty as a part of the cost."

Answering your second inquiry, it is my opinion that when several persons are indicted and tried jointly for an offense and one or more are acquitted, the others being convicted, the solicitor's fee, trial tax and stenographer's fee should be proportioned among those convicted. Certainly you could not charge up any costs for the State against the parties acquitted.

See cases cited, supra.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 29, 1931

Hon. S. R. Butler,
State Tax Commissioner,
CAPITOL.

Attention: Mr. John S. Mooring.

License—Cotton Buyers, Cotton Warehouse, License for cotton

warehouse does not permit one to engage in principal business of buying cotton without license therefor.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of October 8, 1931. You call attention to Schedules 35 and 114, of Section 361, Revenue Act 1919 (p. 282) carried as Schedules 47 and 182, Compilation Revenue Laws of Alabama, 1929, pp. 246, 314.

These Sections are as follows:

"Section 47. Cotton Buyers—Each person, firm or corporation whose principal business is buying cotton, twenty-five dollars, which shall entitle him to buy cotton in any county in this State."

"Section 182. Warehouse—cotton.—For each person, firm or corporation operating a warehouse or yard for the storage and hauling of cotton for compensation a license tax to the State as follows: Every such warehouse storing not more than five thousand bales in any one year, ten dollars; more than five thousand and not more than ten thousand bales, twenty-five dollars; more than ten thousand and not more than twenty thousand bales, fifty dollars; more than twenty thousand and not more than thirty thousand bales, seventy-five dollars; more than thirty thousand bales, one hundred dollars."

You request my opinion:

"Where a party has taken out the warehouse license does such license permit such party to buy cotton without taking out the cotton buyers' license?"

In answer, will state a person, firm, or corporation is not liable for a cotton buyer's license unless the buying of cotton is **the principal business** engaged in. Whether the warehouseman's "principal business" is that of a cotton-buyer or cotton warehouseman is a matter which you must decide from the facts before you. The fact that one has paid the warehouse license does not exempt him from liability to the cotton-buyers' license, if his **principal** business is that of cotton buying.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 29, 1931

Hon. Winston Huddleston,
Circuit Solicitor,
Wetumpka, Elmore County, Alabama.

Banks and Banking—National Banks.

State Banking laws do not apply to.

State statutes on embezzlement no application in National Banks.

Forgery, when cognizable under State statutes.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of September 25, 1931. You inquire:

1. What jurisdiction has a State Court as to the following offenses committed by officers or agents of national banks:

(a) Embezzlement of funds of such banks.

(b) Forgery based on false and fraudulent entries in records of such banks.

In answer to your first question will state that a State Court has no jurisdiction to try an officer or employe of a national bank for embezzling the bank's funds, such offense not being indictable at common law.

United States v. Burkey, 38 Fed. 99;
Commonwealth v. Ketner, 92 Pa. 372, 37 Am. Rep. 692.

National banks are instrumentalities of the Federal Government, created for a public purpose, and as such necessarily subject to the paramount authority of the United States. Any attempt by the State to define their duties or control the conduct of their affairs is absolutely void, wherever such attempted exercise of authority conflicts with the laws of the United States, and either frustrates the purpose of the national legislation or impairs the efficiency of these agencies of the Federal Government to discharge the duties for the performance of which they were enacted.

Davis v. Elmira Sav. Bk., 161 U. S. 275, 40 Led. 700.

"Whenever it is made to appear in a criminal case pending in the State Court that the acts charged in the indictment were done by the defendant as an officer or agent of the United States in and about a matter within Federal control * * * then it is made to appear that the State Court is asked to assume a jurisdiction which it cannot

rightfully exercise; and if that court entertains the case and proceeds to adjudicate on the question of the extent of the authority possessed by the officers of the United States, * * * testing the same by the provisions of State statutes, * * * it proceeds at the peril of having its jurisdiction questioned and denied."

In re Waite, 81 Fed. 359.

A State Court has no jurisdiction of an indictment against an officer of a national bank for receiving a deposit when the bank is insolvent. State statutes to that extent are unconstitutional. We have no such statute in Alabama.

Easton v. Iowa, 188 U. S. 220, 47 Led. 452.

An accessory to an embezzlement by an officer of a national bank cannot be prosecuted for a felony in the State Courts, though he is not indictable in the Federal Courts.

Commonwealth v. Felton, 101 Mass. 204.

In answer to your second question a State Court might have jurisdiction of such forgery. In this connection see particularly

Cross v. State, 132 U. S. 131, 33 Led. 287. (This case is distinguished in Easton v. Iowa).

Forgery of a note by the president and cashier of a bank with intent to deceive the United States bank examiner, by entering it upon the books of the bank as assets, is within the jurisdiction of the State Court, although the Federal Court has exclusive jurisdiction to determine the falsity of the entries and punish the makers.

State v. White, 101 N. C. 770, 7 S. E. 715, aff. 132 U. S. 131; 33 Led 287.

Although an act constituting forgery under a state law is committed in violation of the National Bank Act and solely for that purpose, the jurisdiction of the State Courts to try indictments for forgery is not ousted by the fact that Federal Courts are given exclusive jurisdiction of offenses against the United States.

Cross v. N. C., supra.

The Case of Cross v. N. C. is distinguished from Easton v. Iowa in this, that the former case relates to a crime defined and punishable at **common law** or by the **general statutes** of the state.

"Undoubtedly a state has the legitimate power to define and punish crimes by general laws applicable to all persons within its

jurisdiction * * * * However, it is without lawful power to make * * * special laws applicable to banks organized and operating under the laws of the United States."—Easton v. Iowa, supra.

It seems under the rule laid down in Cross v. North Carolina, that the decision of the Pennsylvania Court in Commonwealth v. Luberg, 94 Pa. 85, still stands. You cite that case in your letter and, therefore, I presume you are familiar with it. It, like the Cross case, seems to be based on the idea that the offense charged, i. e., fraudulently making false entries, reports and statements with intent to injure and defraud the bank —was forgery at common law.

You will observe from study of the Cross case also that the decision turns on the fact largely that the federal statute did not **necessarily** involve the crime of forgery for which defendant was being prosecuted. Under the decision in the Cross case, which seems to have been cited with approval in other matters on several subsequent occasions, I think the State has jurisdiction to punish one violating its forgery laws regardless of the fact that the offender committed his act in connection with the affairs of a national bank.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 29, 1931

Hon. W. H. Cantrell,
Judge of Probate,
Hamilton, Marion Co., Ala.

License Inspector—Citations of delinquents.

License Inspector—establishing office in probate judges' office.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of October 19, 1931. You request my opinion:

"1. If the License Inspector puts a representative in the office of the Probate Judge on November the 1st., this being the day all privilege license become delinquent, and gives a citation to all that come into the office for the license they are about to purchase, then is it the duty of the Probate Judge to collect the citation fee as well as the penalty when they purchase their license?

"2. Does the license inspector or his representative have a right to establish an office in the Probate Judge's office for the purpose of catching delinquents who come in voluntarily to purchase their license?"

In answer to your first question, will say no. There must be strict compliance with the provisions of Section 72, Act approved July 22, 1927 (Acts 1927, p. 183-185) in order for the License Inspector to be entitled to the penalty. This office has repeatedly ruled that the delinquent must not only be cited but the probate judge must also be notified of the delinquent in order for the penalty to attach notification of the delinquent without proper notification of the probate judge, or vica versa, is not a compliance with the law.

Opinions Attorney General, 1926-28, pp. 49, 186, 375.
Opinions Attorney General, 1928-30, pp. 592, 766.

There is no presumption of law that any person is delinquent in paying the license due by him, and, hence, unless the inspector notifies the Judge of Probate, of the delinquency before the delinquent applies for a license the Judge of Probate is under no duty to demand of the delinquent the penalty.

Opinions Attorney General, 1926-28, p. 375.

The citation by the License Inspector must be for the alleged delinquent to appear before him at the county court house and (1) show cause why the license or privilege tax required by law has not been paid, and (2) if such license is due, **then** compliance with the foregoing having been had, the inspector causes the delinquent to appear before the Probate Judge in order that license may be issued by said Judge.

(Section 72, Rev. Act 1927, p. 183).

In answer to your second question, will state that neither the license inspector nor his deputy has a right to establish an office in the office set apart for the Judge of Probate of the county. The License Inspector being a law enforcement officer (Section 72, Rev. Act 1927), of course, has the right to come into the Probate Judge's office under reasonable circumstances, but I know of no power he possesses which will authorize him to monopolize the space in said office, nor authorize him to interfere in any way with the prompt and efficient conduct of work on the part of the Judge of Probate.

Opinions Attorney General, 1928-30, p. 418.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 29, 1931

Hon. G. M. Watson,
County Superintendent of Education,
Linden, Marengo County, Alabama.

Schools—Condemnation of property under Section 132, School Code of 1927.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of October 3, 1931 in which you state that at Magnolia there is a dire need of drinking water for school children. Several wells have been drilled on the school property, some extending, perhaps, a thousand feet without satisfactory results. You state that sufficient and satisfactory quantities of water can be obtained from wells on adjacent property.

You inquire as to whether or not the County Board of Education of Marengo County can acquire said wells by the institution of condemnation proceedings under Section 132, School Code, 1927.

I am of the opinion that your question should be answered in the affirmative. Said property can be acquired by the institution of condemnation proceedings under and by virtue of Section 132, School Code, 1927, which provides as follows:

"132. Powers of County Board.—The County Board of Education shall have the right to acquire, purchase, or **by the institution of condemnation proceedings if necessary,** lease, receive, hold, transmit and convey the title to real and personal property for school purposes. It may sue and contract, all contracts to be made after the resolutions have been adopted by the Board and spread upon its minutes. All processes shall be executed by service on the executive officer of the Board."

Relative to the above I wish to refer you to the case of Dean vs. County Board of Education 210 Ala. 256, 97 So. 741.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

Copy to
Hon. A. F. Harman,
State Supt. of Edu.
Capitol.

October 29, 1931

Hon. O. L. Haynes, Secretary,
Alabama Real Estate Commission,
CAPITOL.

Disabled veteran who can qualify under the terms of the Act (House Bill 833—Kelly of Talladega) can secure the exemption from the license required of real estate brokers and salesmen as provided for by the Alabama Real Estate Act of 1927, but such exemption does not relieve such party from the requirement of qualifying otherwise under the provisions of said Real Estate Act.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 23rd, and also your letter of October 17th with reference to the exemption of disabled veterans from the license required by the Real Estate Act of 1927.

In reply thereto I beg to advise that if the party claiming the exemption can make the required proof that he is a bona fide resident elector, that he served in the World War, the Spanish-American War or in the Southern Confederacy in the Civil War, that he is disabled to the extent of ten per cent or more, and can give proof thereof as provided for by Section 8, that the business is carried on as a means of livelihood, and is carried on through his own efforts, or through his own efforts and with the help of not more than one assistant or employee, he is, in my opinion, entitled to the exemption. I base this on the following language to be found in Section 5:

"The term 'license tax', as used in this Act, shall be deemed to include any tax prescribed by a license tax schedule, but not to exclude any license tax otherwise prescribed."

However, this exemption does not apply to corporations or associations or partnerships which have more than one assistant. For your information I quote Section 9:

"Section 9. No exemption or commutation herein provided for shall be allowed any corporation, association or partnership, except as to partnerships, the prescribed exemption or commutation shall be allowed a partnership when each partner thereof would be individually entitled to an exemption hereunder; 'Provided that an individual entitled to such exemption shall not be denied it by reason of being a member of a partnership in those cases when license is required of the individual members of a partnership and not of the partnership as such."

It will be seen that partnerships can be given the exemption only in case both members are entitled to it, and, of course, the preliminary requirements as to disability, that the business is carried on as a means of livelihood and with the help of not more than one assistant, are necessary to entitle the firm to exemption.

The Alabama Real Estate Act of 1927 is a regulatory Act, and, of course, the exemption from license given by the Kelly Act does not exempt the person from otherwise qualifying as a real estate broker or salesman as provided for by the terms of the Alabama Real Estate Act of 1927.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 31, 1931

Hon. John S. Mooring,
Assistant to State Tax Commissioner,
CAPITOL.

Building and loan associations liable for license as money lenders provided by Schedule 70, Section 361, Acts 1919, p. 282.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 16, 1931, in which you make the following inquiry:

"Please advise us if building and loan associations are liable for license as money lenders under the provision of Schedule 70, Section 361, Acts 1919, p. 282."

In reply beg to advise that it is my opinion that building and loan associations are liable for the money lenders' license provided for by said Schedule 70. I believe that building and loan associations lend only to their own members, but membership is open practically to all persons, and I find no exception in the law except banks and banking associations. It is, therefore, my opinion that building and loan associations are liable for the money lenders' license.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

October 31, 1931

Hon. John Brandon,
State Auditor,
CAPITOL.

It is legal for Auditor to sign warrant attached to proper voucher.

Opinion by the Attorney General.

My dear Sir:

I am in receipt of your letter of October 29, 1931, in which you state that you enclose two vouchers which have warrants attached for your signature. You inquire whether or not the fact that the warrants which are attached to the vouchers, proper vouchers duly audited and approved, may be paid in view of the fact that the same was prepared by some other Department, in the amount of the vouchers for your signature.

Subdivision 8 of Section 806 makes it your duty to draw warrants for the payment of all moneys directed by law to be paid out of the State Treasury. The warrants have been prepared by other Departments of the government in the proper amount, that is the amount of a duly audited, itemized and approved voucher, which accompanies the warrants presented for your signature.

Of course under Subdivision 8 of Section 806 of the Code of 1923 you have not drawn a warrant until you affix your signature to the same. The drawing of the warrant is the signing of the same by you within the contemplation of this Section of the Code.

Of course if you prefer not to use the form of warrant presented for your signature by the Highway Department, you may prepare the warrant in detail yourself. However, the warrant presented is in proper form. As a matter of fact should you desire you could write the warrant out in all praticulars in long hand. I can see no difference in the use of the warrant filled out in the proper amount than in the use of the form prepared by the printing companies. If the warrant is not filled out in the amount of a voucher, you of course would not sign the same, or should you find the voucher incorrect you would not sign the same. It cannot be seriously contended that simply because the Highway Department filled in the amount of the warrant it wishes you to sign that you have not drawn the warrant. Your liability is not affected by reason of the fact that the Highway Department fills in the amount. In a matter of this kind the only advice I can give to you is that you have drawn the warrant when you affix your signature the same as though you had prepared the warrant in your own handwriting in each detail. However, you may do as you see fit, write the warrant yourself or sign the one presented by the

Department of the State which obviously merely sought to relieve you of the detail of filling the same out.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 3, 1931.

State Tax Commission,
CAPITOL.

Attention: Mr. J. R. Gamble.

"Infrequent or occasional trips" as used in Section 19, Schedule 13 of the Revenue Compilation of 1929, as amended by the Act of 1931, construed.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 9th in which you state:

"The pertinent part of amended Section 19 Schedule 13 of the Revenue Laws of Alabama, compiled 1929, reads as follows:

" 'The provisions of the foregoing sections relative to registration and display of registration numbers shall not apply to a motor vehicle owned by a non-resident of this State and not used for hire in this State, nor to motor vehicles hauling for hire household goods exclusively for the householder, which said motor vehicles make only infrequent or occasional trips into this State.'

"We are having numerous inquiries from our License Inspector as to the meaning of the phrase 'infrequent or occasional trips.' Please, therefore, render an opinion to this Commission on the following question:"

You ask my opinion as to the following:

"How many trips a week, month, or year would be under Section 19, Schedule 13, supra, considered 'infrequent or occasional' trips."

In reply I beg to advise that it is exceedingly difficult to lay down any hard and fast rule by which these terms can be defined. Webster's Unabridged Dictionary defines "infrequent" as:

"Seldom happening or occurring; rare; uncommon; placed at considerable intervals or distances; occasional."

"Occasional" is defined by the same authority as:

"Happening now and then; casual; incidental."

Taking these definitions into consideration, it is my opinion that to authorize the exemption, it must be clearly shown that the trip was made under exceptional circumstances, that it is not a part of the regular business of the claimant, and that it is in its nature an emergency use. If such a party made these trips at regular or fairly regular intervals it would, in my opinion, indicate that such was a part of the regular business of the claimant and would remove any right to the exemption claimed. In the last analysis, it is a question of fact to be determined by your agents upon full investigation. Roughly, I would say that if the use bona fide is occasional or for emergency purposes no license should be charged, but if the party is engaging in it regularly, then the exemption would not apply.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 3, 1931.

Hon. A. F. Harman,
State Superintendent of Education,
CAPITOL.

Refunds—Of school taxes under void or illegal levy.

Opinion by Assistant Attorney General McCall.

Dear Sir:

This acknowledges receipt of your letter of October 22, 1931, transmitting copy of communication to you from Hon. J. M. Lawson, County Superintendent of Education of Limestone County. Reference is made to an opinion of this office dated October 1, 1931, to Hon. A. F. Harman. Mr. Lawson indicates there is a possibility that a number of district taxes will be declared null and void in the near future. He interprets the former opinion of this office as holding that balances in such accounts must be held as trust funds. He seems to be considering spending all of such balances therefore for the benefit of the districts in which collected, and later requesting "that the County Board of Revenue declare them all null and void, then proceed with redistricting and levying another tax for next year." He states that if he can follow this procedure he can run the schools a full term inasmuch as the balances in such district tax accounts would almost "take the place of what we hoped to collect."

Upon the foregoing statement you request my opinion.

In the case of district school taxes, where the levy of same has been declared null and void by competent authority after the tax has been collected by the tax collector and paid over by him to the treasurer of school funds and expended by the county board of education for the purpose for which same was voted, can a taxpayer recover such taxes paid by him?

In answer, will say yes.

Provision for recovery is made by Sections 3144, 3145, and 3146, Code of Alabama 1923, (Same law carried as Sections 321, 322, 323, Comp. Rev. Laws 1929). The payment must have been made by the taxpayer within six years preceding the commencement of any action, suit, or proceedings for recovery.

If a county board of education receives funds illegally, it is subject to suit for recovery.

Allred vs. Dunn, 207 Ala. 469; 93 So. 390;
Wall-Hay-Wall Lbr. Co. vs. Matthews, 211 Ala. 426, 427; 100 So. 824.
Opinions Attorney General, 1924-26, p. 89.
Opinions Attorney General, 1928-30, p. 748.

I do not believe that the board may absolve itself from liability for refund of the money simply by reason of the fact that it has spent it. The code makes no such exception. Somewhat similar to the situation is where an Act of the Legislature is held void or unconstitutional. On that point the Supreme Court of Alabama has said:

"An unconstitutional statute or void act is just as if it had never been. Rights cannot be acquired under it; contracts and agreements depending solely upon it are void and of no effect; it can protect no one, and no one can be punished or required to respond in damages for refusing obedience to it."

Norwood vs. Goldsmith, 168 Ala. 224 (at 236) 6 A & E Enc. of Law, 1091;
Cooley's Const. Lims., p. 259;
Norton vs. Shelby Co., 118 U. S. 426, 30 L. Ed. 178.

"A **void** thing is **no** thing. It has no legal effect whatsoever, and no rights whatever can be obtained **under** it or **grow** out of it. In law it is the same thing as if the **void** thing had never existed."

Mobile County vs. Williams, 180 Ala. 639 (at 646) 61 So. 916;
And see, Bloomington vs. Bloomington, Ann. Cas. 1913 A-471 (Ill.)

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 3, 1931.

Hon. Wm. F. Feagin, Director,
State Board of Administration,
CAPITOL.

Convict—Credit for time served prior to time he was unlawfully discharged—no credit for time while he was out of penitentiary by order of prison officials, but such order being illegal.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of October 20, 1931. You state that on March 29, 1930, one, Haskins, was sentenced in the Circuit Court of Lauderdale County to an indeterminate term of not less than two years nor more than four years as punishment for the offense of burglary, grand larceny, and receiving stolen goods. At the time sentence was passed on this defendant, no appeal was taken and no suspension of sentence was asked pending appeal. On April 2nd, 1930, this prisoner was received into Kilby Prison. On September 1st., 1930, this prisoner filed notice of appeal, notice of which was received by the State Board of Administration December 23rd, 1930. On December 20th, 1930, the Sheriff of Lauderdale County, telegraphed the Board as follows:

Desmond Haskins has made appeal bond in his case please release him at once."

and the defendant was released from Atmore Prison, where he had been transferred from Kilby Prison, on December 24, 1930. On September 29, 1931, the prisoner presented himself at Kilby Prison to complete his sentence, his case having been affirmed.

You request an opinion of this office on the following matters:

1. Should the time served by this prisoner after conviction and prior to his release on December 24, 1930, be taken into consideration in computing the expiration of his sentence?

2. Since the Court did not order a suspension of sentence at the time the prisoner was sentenced, was he properly discharged on the order of the Sheriff of Lauderdale County?

3. If he was not properly discharged, should the time between December 24, 1930, the date of his discharge from Atmore Prison on the order of the Sheriff, and September 29, 1931, the date on which he delivered himself after his case was affirmed by the Court of Appeals, be taken into consideration in computing the expiration of his sentence?

Before answering the questions set out above I wish to call to your attention, Sections 3237, Code of Alabama, 1923, which is as follows:

"Appeals in criminal cases must be taken at the time of sentence as confession of judgment or within six months thereafter in manner following: (a) An entry of record that defendant appeals from the judgment, with or without suspension of judgment, as he may elect, to be taken at the time of judgment rendered, or (b) The filing of a written statement signed by the defendant or his attorney that defendant appeals from the judgment; the statement to be filed within six months."

In answer to your first question it is my opinion that the time served by the prisoner after conviction and prior to his release on December 24, 1930, should be taken into consideration in computing the expiration of his sentence.

Answering your second inquiry it is my opinion that the prisoner was unlawfully discharged from the penitentiary.

"The right of appeal is purely statutory depending entirely upon the wording and construction of statutes, which should be liberally construed in favor of a party seeking redress by appeal. This right of appeal in criminal cases has been provided for in Sections 3237 and 3241 of the Code of 1923, which must be considered in pari materia."

In Section 3237 the time of taking an appeal is fixed either at the time of sentence, or if not then, within six months thereafter. Under subhead (a) of said section provision is made for suspension of judgment. Under subhead (b) no such provision is made. The taking of an appeal does not ipso facto suspend the judgment, but requires an order of the court upon the election of the defendant to be taken at the time of judgment rendered.

"The time for the election by the defendant to have the execution of sentence suspended is at the time of sentence and not afterward, and, not having so elected, his right of appeal is extended for a period of six months under subhead (b), subject to his rights under Section 3672 of

the Code of 1923. To give to the statutes the construction insisted upon by petitioner would result in interminable confusion in all those cases where appeals are taken subsequent to the date of sentence."—Ex parte State ex rel Coburn, 104 So. 346. In view of this case and the statement of facts in your letter: **"At the time sentence was passed on this defendant no appeal was taken and no suspension of sentence was asked pending appeal,"** the prisoner was unlawfully released. His appeal was filed within the time allowed by law but at the time of filing of the appeal he was not entitled to a suspension of sentence.

I would also like to call to your attention the case of State vs. Williams, 99 So. 660, the headnote of which is as follows:

> "After defendant has appealed in a criminal case, the circuit court is without jurisdiction to grant and fix bail, since if defendant has any rights under General Acts 1931, p. 87, he must proceed in the Court of Appeals, and not the Circuit Court."

In answer to your third inquiry it is my opinion that the prisoner should not be given credit for that time which elapsed after he was released from the penitentiary and before he returned after affirmance of his case.

In the case of Ex parte Crews, 67 So. 804, upon the conviction of defendant his bond was fixed and made, but there was no order of the judge suspending sentence. He was released pending appeal, then upon affirmance of case, he attempted to obtain credit for the time which elapsed prior to his admittance to the penitentiary on the ground that his sentence was not legally suspended. The court held that sentence was not legally suspended, but also held that defendant was not entitled to be given credit for that time. "However treated, therefore, whether the petitioner lawfully or unlawfully procured his release from confinement, he actually and in fact accomplished a suspension of sentence during the time he was so out on bail, and, having done so, he is in no position to complain of a failure of the court to make and enter the order authorizing such suspension."

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 3, 1931.

Hon. John Brandon,
State Auditor,
CAPITOL.

Payment of commissions on assessments by Tax Collector to Tax Assessor during the first tax assessment year—October 1st to following September 30th—of a new tax assessment year.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Receipt of your letter of October 12th is acknowledged. You make the following statement of facts:

A new Tax Assessor for Jackson County was elected at the last general election who took office October 1st, 1931.

Owing to the manner of assessment and collection of taxes on motor vehicles,—different as to time for assessment and collection of other **ad valorem** taxes—you ask my opinion as to whether or not **ad valorem** taxes collected on motor vehicles each fiscal year is to be considered the first money collected by him, within the meaning of Section 3040 of the Code of Alabama, out of which the Tax Collector should pay the incumbent Assessor eight per cent on the first thousand, four per cent on the second thousand and two per cent on the next ten thousand.

In reply will say that, in order for a Tax Assessor to see his rights clearly, all questions of self must be eliminated, or his vision may be obscured. It is evident that it was never intended by the Legislature that this high rate should be paid in any fiscal year on the first thousand dollars to both the retired and the incumbent Tax Assessor. Neither was it, in my opinion, intended by the Legislature that the commission on taxes assessed by the retired Tax Assessor be paid to the incumbent Tax Assessor, nor that the commission on taxes assessed by the incumbent Tax Assessor should be paid to the retired Tax Assessor. In construing where the commission on assessment of taxes on any property legally goes, the Tax Collector must consider which Assessor assessed the property on which the tax was paid. The commissions to the Tax Assessor on the first thousand collected by the Tax Collector goes to the Tax Assessors, each, in proportion to the taxes assessed by him; and so, on each successive thousand collected by the Tax Collector. In other words, if five hundred of the first thousand dollars collected by the Tax Collector was the taxes on motor vehicles collected during the current fiscal year, assessed by the incumbent Tax Assessor, and the other five hundred dollars of the first thousand dollars collected by the Tax Collector was on taxes assessed the previous fiscal year by the retired Tax Assessor, then eight per cent on five hundred dollars goes to each, the incumbent and the Retired Tax Assessor. Each succeeding thousand dollars collected by the Tax Collector is treated in the same way by the Tax Collector with the per cent allowed for each thousand dollars.

Of course, this situation does not occur except during the first tax assessment year of a new Tax Assessor.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 3, 1931.

Hon. W. A. Butler,
Judge of Probate,
Luverne, Crenshaw Co., Ala.

Counties—Commissioners—Per Diem and mileage discussed.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of April 21, 1931. You request my opinion:

"1. Is a member of the court of county commissioners entitled to mileage each day he attends the court from his home to the courthouse where it takes more than one day for the court to transact its business and the days are consecutive?

"2. Is such commissioner entitled to mileage for any other purpose than letting out, inspecting and accepting building, or repairing of county bridges or county buildings or work?

"3. If entitled to mileage for inspecting, accepting, building of county bridges, buildings or works, under what circumstances is such commissioner entitled to such mileage?"

Your first question is answered in the negative.

Opinions Attorney General, 1928-30, p. 785.

Section 6771, Code of Alabama, 1923, contains the provision that each member of the court shall be paid the sum of $3.00 per day for his services and five cents per mile in going to and returning from their respective courts. In my opinion this provision permits members of the court to be paid for attending regular sessions of the court, but does not entitle them to mileage for attending court from day to day, or to mileage for attending court after the court has adjourned for one or more days.

Answering your second question will state that the only compensation allowed a commissioner other than above mentioned is the sum of three dollars per day and five cents per mile necessarily traveled by him in the discharge of his duties in **"letting out, inspecting and accepting, building or repairing, of any county bridges, or county buildings or works."**

In answer to your third question will state that as a condition precedent to such commissioner claiming per diem and mileage under number 2, there must first have been a **specific** order of the courts for **him** to do the **specific** work at **a specific time.** A general or blanket order is not sufficient.

Furthermore all such claims for mileage, etc. must be properly itemized and presented and allowed or disallowed.

These are the uniform rulings of this office and your attention is called to the Biennial Reports of the office for 1926-1928 and 1928-30, copies of which should be in your possession.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 6, 1931.

Hon. Wm. C. Batson,
Judge of Probate,
LaFayette, Chambers Co., Ala.

Registrars.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of October 23, 1931. You state that approximately two-fifths of the people of your county live in a radius of eight miles up and down the river on the east side, and being all industrial people do not have conveyance to come fourteen to twenty miles to the county courthouse, and that, therefore, if arrangements can be made to all your County Board of Registrars to spend "two more days" of the remainder of its present term or its January term in the eastern part of your county this will afford them a better opportunity to register.

You request my opinion:

Can this be done?

In answer will call your attention to Section 375, Code of Alabama, as amended by Act approved August 20, 1927 (General Acts 1927, p. 274).

This statute authorizes and requires the Board of Registrars to meet for not exceeding thirty working days between October 1 and December 31, 1931 to make a complete registration of all persons entitled to register. During these thirty **working** days they must visit each precinct "at least once and oftener if necessary." They must remain in each precinct "at least one-half a day," on such visit or visits. The sessions of ten working days in January, 1932, must be held at the courthouse. So long as the plain requirements of Section 375, as to visiting each precinct and time spent therein, are complied with, in the manner therein prescribed, I know of no provision of law that inhibits the Board of Regis-

trars from spending two of its remaining days in the part of the county to which you refer—that is during the October-December, 1931, session. At the January, 1932, session, all sessions must be held at the courthouse.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 9, 1931.

Hon. Cyrus B. Brown, Chairman,
County Board of Revenue,
Montgomery, Montgomery County, Alabama.

Counties—Powers of Courts of County Commissioners, Boards of Revenue, and other like governing bodies under Section 1347, Code of Alabama, 1923, as reenacted in Section 157, "Alabama Highway Act" approved Aug. 23, 1927, (General Acts 1927, p. 391).

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of November 6, 1931. You request my opinion:

"Will you please advise if under Section 1347, Code of Alabama, 1923, as reenacted in Section 157, Act approved August 23, 1927, known as "Alabama Highway Code" (General Acts 1927, p. 391), the Board of Revenue of Montgomery County has a right to appoint a road patrolman or road patrolmen to enforce rules and regulations in regard to the public roads in said county and to fix their compensation?"

An answer to your question involves a careful analysis of the statute cited. Section 1347, Code of Alabama, 1923, as reenacted in 1927, will be found as Section 157—the first section—under Article IV of an Act approved August 23, 1927, designated "The Alabama Highway Code." The pertinent part of the section reads as follows:

"The court of county commissioners, boards of revenue, or other like governing bodies * * * * have **general superintendence** of the public roads, bridges and ferries within their respective counties so as to render travel over the same **as safe** and convenient as possible. **To this end** they have **legislative,** judicial and executive powers, except as limited in **this article.** (They) * * * * are courts of unlimited jurisdiction and powers as to * * * * maintenance * * * * of the public roads, bridges and ferries in their respective counties **except** as their jurisdiction or powers may be limited by the local or special statutes of the State. They may **establish, promulgate** and **enforce**

rules and regulations, make and enter into such contracts as may be necessary, or as may be deemed * * * * advisable by such courts * * * * to * * * * maintain a good system of public roads (etc) * * * * in these respective counties, and **regulate the use thereof**; * * * *"

The statute quoted is not intended to interfere with the duty imposed upon the discharge of duties on the part of the State Highway Commission (Sections 6½; Subsection (b) of Section 10, Section 19, Act of 1927, supra), and the right of the local authorities must be read in the light of Section 77 of said Act, as well as the other statutes on the general subject, to the end that it may be understood that Section 157 is not designed to relieve any State authority of its designated duties.

The sheriff of the county is the chief law enforcement officer of the county and cannot be divested of any duty to enforce the criminal laws in the county. However, the fact that the Legislature has seen fit to provide for patrolmen by a separate Act does not indicate any intention to limit the otherwise very general powers of the Board of Revenue as to regulating the use of public roads.

While the power conferred under Section 1347, as reenacted, does not go to the extent of permitting the Board to employ persons to discharge duties committed solely to other officers or agencies,—(Walker v. Bridgeforth, 9 Ala. App. 257, 262) still upon more mature consideration of the decision of the Court of Appeals, cited above, I am inclined to the view that the Supreme Court, in a later decision (Ensley Motor Car Co. v. O'Rear, 196 Ala. 481; 71 So. 704), has given to Section 1347, as reenacted, a more liberal construction, sufficient that I am of the opinion now that the employment of a person or persons by the Board of Revenue to assist it in efficient performance of its duties in safely maintaining and regulating the use of the public roads and bridges in the County is authorized thereunder. I think the employment of an agent to assist the Board in the discharge of this duty is as reasonably necessary and as lawful as, the purchase of a motor vehicle, which latter authority the Supreme Court specifically holds to be granted in said section.—Ensley Motor Car Company v. O'Rear, supra.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 10, 1931.

Hon. M. A. Strickland,
Circuit Clerk, Lamar County,
Vernon, Alabama.

Indictment—when same can be withdrawn and filed.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of October 15th, 1931, in which you request my opinion as follows:

> When an indictment has been found and turned over to the Clerk and he issues capias on same, which is returned "not found," and on this return at the next term of court he issues alias capias, which is returned marked "not found," is it proper for the case to be docketed and on request of the Solicitor, is the Clerk or Judge authorized to order said indictment withdrawn and filed?

My answer to your inquiry is in the affirmative.

It is true that under Section 4547, Code of Alabama, 1923, no record of the indictment is to be made on the minutes of the court and this would, as a matter of course, preclude it from being docketed. But after two capias have been issued for the arrest of the defendant at two separate and distinct terms of court, this rule seems to be changed by Section 4548, Code of Alabama, 1923.

This section is as follows:

> "4548. Withdrawal and filing of indictment or affidavit—In all criminal cases in the circuit court, in which a capias or warrant of arrest has issued for two terms, and has been returned 'not found,' the solicitor may, by leave of the court, withdraw and file the indictment, with leave to reinstate the same when the ends of justice require such reinstatement."

Scott vs. State, 94 Ala. 80,
State vs. Drinkard, 20 Ala. 13.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 10, 1931.

Hon. H. H. Stewart,
Assistant Director,
Board of Administration,
CAPITOL.

Section 7855 does not apply to criminal cases; this Section applies only to civil cases and cases of a civil nature; the same relief afforded by Section 7855 in civil cases is afforded by the common

law in criminal cases; with two additions, Section 7855 is merely declaratory of the common law; at common law courts of record had inherent power to correct errors in the records of the court of a ministerial or clerical nature and apparent on the record; in a criminal case where the defendant is sentenced to hard labor at the rate of seventy-five cents per day to work out costs, and in writing up the judgment from the docket or bench notes, the clerk of the court miscalculates the costs and arrives at an amount greater than the correct or true amount, such an error is a clerical or ministerial error as may be corrected by the court under the common law rule controlling this subject in Alabama; the memorandum used by the clerk in calculating the costs is a part of the court record; such an error on the part of the clerk is not of a judicial character and in no wise changes or alters the judgment of the court.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I beg to acknowledge receipt of your letter of May 25, 1931, as follows:

> "When a defendant is sentenced to hard labor for costs and it is later shown that the clerk, in calculating the total cost, has made a clerical error and the defendant has been sentenced to a longer or shorter time than is required to pay the proper cost, can his sentence be corrected to speak the truth regardless of date of sentence."

You do not enclose copy of the judgment in question and the facts you furnish are rather meager. As I understand, you inquire whether or not a judgment in a criminal case may be amended, nunc pro tunc, as provided by Section 7855 of the Code of 1923, in a case where the Court has sentenced the defendant to work out court costs at hard labor at the rate of seventy-five cents per day, and, the clerk in figuring the costs, makes an error. In other words, the costs really amount to $45.00, whereas the clerk arrives at the amount as $60.00. This means that the clerk has made an error of $15.00. In writing up the judgment from the docket or bench notes, the clerk arrives at the number of days to be served at hard labor (for costs) on the basis of $60.00 instead of $45.00. Can this error be corrected by amendment, nunc pro tunc, as provided by Section 7855?

I have reviewed the history of this Section from the time it first appeared in Clay's Digest in 1824 down to and through the Code of 1923. The Section has appeared in eight Alabama Codes, and has been the law of this State (with two slight changes) for approximately one hundred and seven years—from 1824 down to the present time. After studying the history of the Section and the decisions of our Courts in construing the Section, I have reached the following conclusions:

First: That Section 7855 does not apply to criminal cases; that this Section was intended by our lawmakers to apply to civil cases and cases of a civil nature; that all Courts of record, under the common law, have an inherent right and power to correct clerical errors or ommissions which may intervene in making up their records.—Ex parte Jones, 61 Ala. 399; Wilkerson vs. Goldthwaite, Vol. 1, Stewart and Porter, 159.

Second: The power of Courts of record, at common law, to make corrections of clerical errors extended alike to civil and criminal cases. —Ex parte Jones, 61 Ala. 399; 1 Gall. 22; Young vs. State, 6 Ohio 435; Sharff vs. Commonwealth, 2 Birm. 514; State vs. Williams, 2 McCord, 301; State vs. Seaborn, 4 Dev. 319.

Third: The general relief and remedy provided by Section 7855 is merely declaratory of the common law on this subject, and was intended by our lawmakers to apply only to civil cases, or cases of a civil nature and not to criminal cases. In other words our lawmaking body has, in enacting this statute, merely repeated the rule at common law controlling this subject, and it was the intention of the Legislature to apply the Section only to civil cases or cases of a civil nature, thus leaving the amendment of judgments (for the correction of clerical errors) in criminal cases to be continued under the common law. It is well-known that the common law is the law of this State except as changed by our statute laws and Constitution.

Even when applied to civil cases, Section 7855 has been held not to be a statute of limitation. Sartor vs. Br. Bank, 29 Ala. 353; Marengo County vs. Farley, 209 Ala. 663.

Fourth: In the case under discussion, the error of the clerk in miscalculating the costs is such a clerical error as may be corrected by the court, not under Section 7855, but under the Common Law inherent power of all courts of record to correct their judgments. The Legislature of Alabama has said nothing on the subject of amending judgments in criminal cases by correcting clerical errors. The Common law rule, therefore, governing this subject is controlling. The error in the case under discussion is not of a judicial nature but is of a clerical or ministerial character. The memorandum, in writing, made by the clerk in arriving at the amount of the costs is a part of the record, and the error is apparent on the record.—Ex parte Jones, 61 Ala. 399; Lenoir vs. Broadhead's Administrator, 50 Ala. 58; Whorley vs. Memphis & Charleston R. R. Co., 72 Ala. 20; Ford vs. Tinchart and Brother, 49 Ala. 567; Sherry vs. Priest, 57 Ala. 410; Hastings vs. Alabama State Land Company, 124 Ala. 608; Lee vs. Houston, 20 Ala. 301.

Fifth: I am aware of the holdings in the Gardner case, 21 Ala. App. 388, and in the Warfield case, 34 Ala. 361, as regards applying Section 7855 to criminal cases. Since its enactment, approximately one hundred and seven years ago, this statute has been applied many, many times to civil cases. During all of that time I am unable to find where it has been

applied to more than two criminal cases, and in the Jones case, 61 Ala., the Court in very plain and unmistakable terms, asserted that the Section did not apply to criminal cases. After reviewing all the pertinent law I am able to find on this subject, I am convinced that it was not the intention of the Legislature to authorize the courts to apply this Section to criminal cases. As indicated hereinabove in view of the fact that the Courts of this State have held the three years mentioned in Section 7855 not to be a limitation as to time, this Section is nothing more than a declaration of the common law on this subject, with two slight additions affixed by the Legislature. It becomes immaterial whether a clerical error occurring in a judgment in a criminal case is corrected under the statute or under the common law. Since this Section merely declares the common law, all of the authorities which construe this Section are enlightening as regards the way and manner our Courts apply and construe this part of the common law.

I am of the opinion that the error mentioned in your inquiry is of such a clerical nature as may be corrected at any time. At common law there was no limitation of time as regards the correction, in criminal and civil cases, of clerical errors apparent on the face of the record. Of course, as indicated hereinabove, the error must not be of a judicial nature but must be of a ministerial or clerical nature. At common law a clerical error made by the court, the clerk or by any of the lawyers might be corrected by the court at any time. There is a vast distinction between the exercise of judicial discretion and the commission of a clerical error. If the court has acted in a judicial way, no matter how erroneous the judgment may be it cannot be corrected as a clerical error but may be reviewed on appeal.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 13, 1931.

Hon. Roy Sanderson,
Clerk, Circuit Court,
Hamilton, Marion County, Ala.

Section 3758 provides per diem for sheriff for attending county court which per diem is payable out of the County Treasury and not out of the Fine and Forfeiture Fund; sheriffs' and clerks' fees payable out of Fine and Forfeiture Fund when case is nol prossed, or the defendant is acquitted or where the indictment has been withdrawn; where a defendant has been convicted, and has been proven insolvent by the return of execution "no property found," costs of clerk and sheriff payable out of Fine and Forfeiture Fund.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I beg to acknowledge receipt of your letter of recent date, as follows:

1. Under Section 3758 of the Code of Alabama, 1923 where the sheriff is allowed $2.00 per day for attending county court: Is this fee of $2.00 taxed against each defendant upon conviction in each case or taken against the Fine and Forfeiture Fund in case of acquittal. I am undecided how to charge this item as it has never been taken before, or is it paid out of the general funds of the county by a warrant drawn on said county?

"2. In cases where the fine is paid to the State Treasurer instead of the County, to-wit: Reckless driving, driving a car while intoxicated, etc. If these cases are withdrawn, nol prossed or acquitted can the sheriff and clerk take their cost against the fine and forfeiture funds of the county?

"3. When a man is sentenced to hard labor for the county to pay fine and cost can the sheriff and clerk take the balance of their cost out of the fine and forfeiture funds of the county upon an execution issued and returned 'no property found' when all items have not been paid by the State? When should execution be issued for same?"

In answer to your first question, I am of the opinion that the per diem of $2.00 provided for the sheriff by Section 3758, Code of Alabama, 1923, is payable out of the General Fund of the County. This item of $2.00 is not a fee nor an item of court cost in the sense that it may be charged against the defendant. The $2.00 is a **per diem** provided for the sheriff for each day's attendance at county court. While the $2.00 is commonly designated an item of court cost or a fee, as a matter of fact, it is nothing more than a per diem provided the sheriff for each day's attendance on county court. It is chargeable against the General Fund of the County and not against the Fine and Forfeiture Fund.

In answer to your second question, I beg to refer you to an Act of the Legislature of 1927, approved February 18, 1927 (General Acts 1927, p. 45). This Act amends Section 4039 of the Code of 1923. This Act provides for the payment of fees of officers arising from criminal cases in which the defendant is not convicted, and the costs are not imposed on the prosecutor, or in cases where the defendant may have been convicted and has been proven insolvent by the return of execution "no property found," or in cases in which the State enters a nolle prosequi, or where the indictment has been withdrawn and filed, or the prosecution abated by the death of the defendant. If the case is nol prossed the sheriff's fee is payable out of the Fine and Forfeiture Fund. If the indictment has been withdrawn, the sheriff's fees are payable out of the Fine and Forfeiture Fund. If the defendant is acquitted the fees of the sheriff are paid out of the Fine and Forfeiture Fund.

In answer to your third question: I refer you to the same Act of the Legislature referred to above, which Act amends Section 4039, Code of Alabama, 1923. When a defendant is sentenced to hard labor for the county to pay fine and costs, and the sheriff and clerk have collected from the State all items of cost the State is permitted to pay under the law, if there be any balance unpaid, this is payable from the Fine and Forfeiture Fund of the County, as provided by the Act just referred to. Your third inquiry is answered in the following words of the Act just referred to: "* * * * or in which defendants have been convicted, and have been proved insolvent by the return of executions 'no property found' * * * *." In my judgment, execution should be issued immediately after the sheriff and clerk have collected the part of the cost payable by the State.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 13, 1931.

Hon. R. L. Shamblin,
Sheriff, Tuscaloosa County,
Tuscaloosa, Alabama.

Where convict is sentenced to hard labor or to the penitentiary —how cost collected which is not included under Section 3667, Code of Alabama, 1923.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of October 16, 1931, in which you state:

"During my term of office I have caught several defendants transporting whiskey of five gallons or more. The clerk sent bill for such seizure to the Convict Department. This Department refuses to pay this item of cost."

You request my opinion:

"How am I to collect this cost and who is liable for same?"

These fees are regulated by Section 4654, Code of Alabama, 1923, which is as follows:

"4654. Fees to be taxed for arrest and seizures in prohibition cases.—When an officer arrests any person in possession of an unlawful quantity or quantities of prohibited liquors, or of such liquors

under conditions prohibited by law, then on the conviction of such party of a violation of a city ordinance or state law, whether in the recorder's court, or state court possessing jurisdiction, a fee for making the seizure of the liquors shall be taxed up against the defendant, and paid to such officer as a part of the cost of the case as follows: If a seizure is made of not less than one gallon, nor more than five gallons of such liquors, the fee shall be three dollars; if the seizure be of more than five gallons, and less than twenty gallons, the fee shall be five dollars; and if more than twenty gallons, be seized, the fee shall be ten dollars."

You are entitled to the fees scheduled above, but this fee is not paid by the State on conviction as only such fees as are included in Section 3667, Code of Alabama, 1923, are paid by the State, and this particular fee is not included.

In order that this section may not be confusing to you, I call your attention to the fact that while this section says:

"Such fees are payable when the defendant is sentenced to the penitentiary,"

this section is made applicable to misdemeanor cases by an Act approved February 18, 1927 (General Acts 1927, p. 52). Section 3 of this Act reads in part as follows:

"* * * * and shall pay to the proper county authorities the item of costs provided in Section 3667 of the Code of Alabama as now provided by law * * * *"

Execution should issue against the defendant for that part of the cost not paid by the State under Section 3667, supra, and if returned "no property found" then under Section 4039, Code of Alabama, 1923, as amended by an Act approved February 18, 1927, (General Acts 1927, p. 45) this cost becomes a charge against the Fine and Forfeiture Fund of the county.

Biennial Report of Attorney General, 1928-30, p. 225.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 17, 1931.

Hon. W. W. Brandon,
Judge of Probate,
Tuscaloosa, Alabama.

Judges of Probate—Liability for loss of funds in case of burglary.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of November 12, 1931, in which you state as follows:

> "On November 9th the Court House was entered by burglars and the safe and vault in the Probate Office was blown or drawn and was robbed of about $2,000.00 in cash. This represented the sale of automobile tags for Monday afternoon and was the property in the hands of the Probate Judge of the State and County. The money was stored in a safe until it could be deposited in the bank next morning, which safe was furnished by the county for the purpose of protection. All due care and diligence was used."

You request my opinion as to whether or not you as Judge of Probate, are personally liable to the State for this loss.

Under the facts as stated by you, I am of the opinion that your question should be answered in the negative. The rule in such instances is laid down in the case of **State v. Houston,** 78 Ala. 576, which is as follows:

> "If the collector, having exercised the highest degree of care, diligence and vigilence to prevent loss, is robbed of the public moneys by irresitible force, which he could not have foreseen or guarded against, this constitutes a good defense to an action on his official bond; but, if the money of which he was robbed was not the same money which he had collected, or if he had committed an official default by his failure to pay the money into the treasury as by law required, such robbery would be no defense."

In this connection the case holds that the robbery must be money that is the property of the State to relieve the collector of liability.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 17, 1931.

The Board of Revenue,
Linden, Marengo County, Alabama.

Construing an Act of the Legislature approved July 23, 1931, H. B. 183, the caption of which is as follows: "To empower Boards of Revenue, Courts of County Commissioners, or like governing bodies, to fix the amount of official bonds of all County Officers and all Coun-

ty employees who are intrusted with the handling of public funds and to provide for the payment of the premium on said bonds."

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have a letter from Hon. E. A. Barley, Clerk of the Board of Revenue of Marengo County, enclosing a letter from the Board requesting my opinion as to the provisions of an Act approved July 23, 1931, the title of which Act is as follows:

"To empower Boards of Revenue, Courts of County Commissioners, or like governing bodies to fix the amount of official bonds of all county officers and all county employees who are intrusted with the handling of public funds and to provide for the payment of the premium of said bonds."

In order to discuss the matters that you present in your letter, I will have to arrange them a little differently from the way you have them.

1. Does Section 1 of said Act authorize the Board of Revenue to fix the amount of bond of each county officer from probate judge to constable?

2. Does it empower the Board of Revenue to fix the amount of said bond at any sum or amount that it considers adequate?

3. Has the Board of Revenue the authority to pay the premiums on each of these bonds out of the county treasury?

4. Is the county treasurer of school funds a public officer? Is his bond required to be made in a surety company, and if so, who pays the premium on same?

5. Is this Act constitutional? Is Section 2658, Code of Alabama, 1923, constitutional?

In answer to your first question will say it does not. The Act only authorizes the courts of county commissioners or boards of revenue of the various counties of Alabama to fix the amount of bonds of county officers. Justices of the Peace and constables are not county officers within the meaning of the statute.

Biennial Report of Attorney General, 1928-30, p. 85.

Answering your second inquiry, it is my opinion that under this Act the courts of county commissioners or boards of revenue of the various counties of the State have the exclusive power to fix all bonds of the various county officers. Section 1 is as follows:

"Section 1. That the Board of Revenue, the Courts of County Commissioners, or like governing bodies of all Counties, in the State be and they are hereby empowered with the exclusive authority to fix each year the amount of official bond of all County Officers in their respective Counties whose official bond is now required by law to be fixed or approved by any other authority. Provided however, that all official bonds shall be made by a surety company authorized to do business in the State of Alabama."

In answer to your third question, the premiums on these bonds are payable by the county under Section 2658, Code of Alabama, 1923, (except as otherwise pointed out in this opinion.)

Answering your fourth question, will say that this office has held the treasurer of county school funds to be a county officer, and but for the provision contained in Section 298, Alabama School Code, 1927, which is as follows (speaking of the bond of the county treasurer of school funds): "* * * shall be made at the expense of the county treasurer of school funds." This bond would fall under the general provisions of Section 2658, supra, and the premium on same would have to be paid by the county treasurer, but that section of the School Code, to-wit, 298, provides clearly that the treasurer of school funds shall pay the premium individually on his bond.

Opinions of Attorney General, 11927, Vol. 5, p. 203 (office edition).

The clause quoted above from Section 298, School Code, supra, takes the matter of paying the premium on this bond out of the purview of Section 2658, supra, which provides that the premiums on county officers' bonds are paid by the county. Further answering your fourth question, it is my opinion that it was clearly the legislative intent that the bond of the treasurer of school funds of a county should be made in some surety company.

Answering your fifth inquiry, I know of no reason why the Act here under consideration, and also Section 2658, Code of Alabama, 1923, are not both sound. There is a field of operation for both the Act and the section, and the Act does not directly or by implication repeal the section.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 18, 1931.

State Tax Commission,
CAPITOL.

Attention: Mr. J. R. Gamble.

(1) A person selling merchandise and giving playing cards as a premium held not liable for playing card license.

(2) Where amount paid includes as a part of the total amount paid the value or price of the playing cards then the transaction is a sale of playing cards and renders the person liable as a dealer in playing cards.

Opinion by Assistant Attorney General Moore.

Gentlemen:

I have your letter of November 12, 1931, in which you state:

"We are in receipt of a letter from one of our License Inspectors in which he states as follows:

" 'I have cited the Henderson-Murphree Grocery Co. for selling playing cards and their attorney has advised them not to pay it and they wish a written opinion from the Attorney General; the facts are these:

They sell what they call a $2.00 deal of chewing gum and included in the package is two decks of cards. They claim that only the regular wholesale price of the sum is collected and that the cards are included as a sort of prize but I really think the deal is a little higher than the wholesale price of the gum would be. However whether this surmise is right or not I contend that the cards are a part of the sale as they are in the same package.' "

You ask my opinion on the following questions:

"1st. If the price charged for the merchandise sold is the reasonable market value of such merchandise, without including the value of the playing cards, would the dealer be liable for license under Schedule 23, Section 361, page 282, Acts 1919, which provides:

" 'For each dealer in playing cards or dice—$20.00.'

"2nd. Where the goods sold are not of the value of the price asked without including the playing cards, would the dealer be liable for license for the sale of the 'deal' under Schedule 23, Acts 1919, supra?

"3rd. If playing cards are offered as a premium and given away with goods sold, on the sale of which goods no license is prescribed, would the dealer be liable for license under Schedule 23, Acts 1919, supra?"

In answer to your first question it is my opinion that the party is not liable for the license. The license is on the "dealer" and manifestly a

party giving away cards in the manner described is not a "dealer" within the meaning of the statute.

In answering your second question it is my opinion that the person is probably liable for the license as he is selling playing cards even though along with other merchandise. It is needless to point out that the question of what is a fair price for the merchandise is a question of fact which of course would have to be proved. Accepting your promise, that a certain amount is paid for the other merchandise and an additional amount added thereto by virtue of the playing cards being included, then in my opinion, the transaction constitutes a sale of playing cards and renders the person liable for the license.

In answer to your third question I advise that it is my opinion that there is no liability for license if the transaction is bona fide. The law levies a license on the dealer and there is nothing in the statute which prevents a person giving away playing cards either as a premium or otherwise.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 18, 1931.

Hon. S. H. Blan,
State Treasurer,
CAPITOL.

Involuntary obligations of the State constitute prior claims against the General Fund of the State. Expenses of Executive, Judicial, and Legislative branches of Government, interest on legitimate public debt and expenses of feeding and caring for prisoners and persons confined in corrective institutions of State classed among involuntary obligations of State.

Opinion by the Attorney General.

Dear Sir:

I have your letter of November 16th.

You inquire as to what are the first obligations of the General Fund of the State.

Those obligations in the fulfillment of which it is the duty of the Legislature to make appropriations constitute prior claims against the General Fund of the State. Such obligations I term involuntary obligations as distinguished from those obligations incurred by the Legislature voluntarily in the exercise of its discretion.

Under our system of Government there are three coordinate branches of Government, the Executive, Judicial and Legislative. These branches of Government **must** be maintained that the Government **function.** It is the **duty** of the Legislative branch to provide means of revenue and to make appropriations to maintain the Executive and Judicial as well as itself. Necessarily the expenses of this very framework of the State Government are prior and absolute claims against the revenue in the General Fund of th State. When the Legislature provides revenue for this purpose it is only performing a duty enjoined upon it by the Constitution, concerning the performance of which duty it is without discretion.

People vs. Conners, 43 Pac. 548,
State vs. Burke, 32 La. Ann. 1213,
Univ. of La. vs. Burke, 34 La. Ann. 404.

It is also the **duty** of the Legislature to provide revenue and to make appropriations for the payment of interest on the legitimate public debt.

The preamble to the Constitution provides: "We, the people of the State of Alabama, **in order** to establish justice, insure domestic transquility * * * do ordain and establish the following Constitution and form of government for the State of Alabama."

Justice and domestic tranquility cannot be insured without corrective institutions and prisons for the incarceration of offenders against the laws of this State.

When persons are so incarcerated it is the **duty** of the Legislature to provide revenue and to make appropriations for the food and care of such persons.

The expenses of Government outlined above, of necessity, must constitute preferred claims against the revenue of the State in the General Fund.

It is a matter of common knowledge that the Legislature has attempted to make appropriations from the General Fund of the State, far in excess of the revenue in such Fund, for public improvements and for the maintenance of institutions. This the Legislature did voluntarily exercising its discretion. The expenses incurred in public improvement and in the support of institutions are secondary claims against the revenue in the General Fund.

22 Pac. 468.

Even the Legislature so intended, for the appropriations for such expenses were made from funds **not otherwise** appropriated.

It being the Legislature's **duty** to make appropriations for the expenses of Government heretofore referred to as prior, or claims of the

first class, appropriations made for claims of the second class must be postponed.

Generally speaking the expenses of the Executive, Judicial and Legis lative branches of Governments are provided for by specific appropriation and such appropriation takes precedence over an indefinite appropriation.

Nichols vs. Comptroller, 4 Stewart & Porter, 154, 153 Pac. 773 (Ariz.)
State vs. Sargent, 136 Pac. 602.

For instance, in the Act of 1927 the amount of appropriation made by the Legislature for educational purposes from the General Fund is indefinite and by the terms of the act to be paid from funds **not otherwise** appropriated or from the surplus in the General Fund.

Of course it is to be regretted by all that the Legislature failed to provide adequate revenue for the General Fund to fulfill all appropriations, those for public institutions, claims of the second class, as well as appropriations necessary to keep the very Government in being. Nevertheless, the claims of the second class must be postponed to the payment of claims of the first class or there should be no way of providing revenue, of collecting revenue or of administering the same—in short—no Government.

It was the **Legislature's duty** to appropriate funds for the payment of the claims hereinbefore referred to as involuntary obligations of the State and I advise you that it is likewise and none the less your duty to pay first out of the General Fund such appropriations.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

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November 18, 1931.

Hon. A. F. Harman,
Superintendent of Education,
CAPITOL.

Rewards—Authority of County Board of Education to offer.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of November 12, 1931, in which you inquire as to whether or not the Sumter County Board of Education may legally offer a reward for the capture and conviction of the person or persons who destroyed a stage curtain in the elementary school building at York.

I am of the opinion that your inquiry should be answered in the negative.

The Governor is authorized to offer rewards for absconding felons.—**Section 4162,** Code of Alabama, 1923. A municipality may offer a reward for one committing a high crime or misdemeanor.—**Section** 4163, Code of Alabama, 1923. Individuals and corporations may offer rewards for the apprehension of criminals.—**Central R. R. etc. Co. v. Cheatham,** 85 Ala. 292.

But I know of no authority authorizing a County Board of Education to offer a reward. Section 294, School Code, 1927, has no application in the instant case. The offering of a reward, in my opinion, is not such an expenditure of the bonus fund as will best promote the cause of education as contemplated by said Section.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 18, 1931.

Hon. A. F. Harman,
State Superintendent of Education,
CAPITOL.

Bonus Fund—Used to compensate bank for clerical work in handling treasurer's account.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of September 30, 1931, part of which is as follows:

"In view of the requirement of bonding companies that treasurers of school funds shall furnish bank depository bonds or acceptable securities as a condition to continuing their bonds in force, several treasurers of public school funds have indicated their purpose to resign on account of the expense to the bank in meeting the bond companies' requirements. The situation makes it increasingly difficult for county boards to secure a treasurer or a bank which will accept the deposits.

"May I ask if in your opinion county boards of education can legally use the Bonus Fund, Article 14, Section 293, and Section 294, Alabama School Code of 1927, to compensate depository banks for handling school accounts. If this can be done legally, it will serve to relieve what is now a very critical situation with reference to the handling of school funds."

Section 2930 of the Alabama School Code of 1927 is as follows:

"The funds so set apart for any County shall be expended by the County Board of Education as, in the opinion of the said County Board **will best promote the cause of education** in said County, and there is hereby appropriated annually out of any funds in the State Treasury not otherwise appropriated such sum as may be necessary for each and every year to give all counties qualifying the amount to which said counties may be entitled under the provisions of this Article."

The County Treasurer of School Funds receives no compensation for his services and is required to pay the premium on his bond. In view of this situation the office has become more of a favor to the county than anything else. In most instances the treasurer is an officer of one of the banks of the county, who pays the premium on his bond.

However, a new situation arises, in that the bonding companies, before making the bond of a county treasurer, require that he produce a depository bond from the bank in which the funds are deposited or else deposit sufficient securities in escrow. This in effect requires two bonds of a bank, that in most cases derives nothing from the account, but is handling it purely for the benefit of the educational system of the county.

The school system of any county cannot possibly function without money. This money must be handled by honest and capable people. It must be handled according to law. We cannot expect the banks to handle these accounts at a great loss to themselves.

Section 294, supra, provides that the bonus fund shall be expended by the County Board of Education as, in the opinion of said County Board, will best promote the cause of education in said county. The bonus fund may be used for this purpose only when it is **necessary** to use the same to furnish a place in which public school funds would be safe.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 19, 1931.

Hon. G. W. Robertson,
Tax Assessor, Baldwin County,
Bay Minette, Alabama.

1. In assessing improvements separate from the land, detailed description of such improvements should be given.

2. Where there is a separate interest in land such as a leasehold the same is assessable under Section 5, Acts 1919, page 282.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I duly received your letter of September 9, 1931, enclosing application for land of the Fairhope Single Tax Corporation and lease contract. You ask whether in making assessments on improvements if the description "improvements on colony lands" is sufficient. The various provisions relating to the assessment of property provide as to the assessment of real estate that the lands and improvements should be separately listed. This relates to cases where there is one real estate assessment. As I understand your procedure you assess the land and the improvements separately in such a manner as to constitute the improvements personal property. It is my judgment that the improvements should be so described on each tract so as to indicate the nature of the improvements and give some index as to their value.

It is my opinion also that the lease should be listed in the assessment. Section 5, Acts 1919, page 282, giving the subject of taxation provides in part as follows:

> "Every separate or special interest in any land, such as mineral, the right to mine minerals, timber, and the right to turpentine, or other interests when such interests are owned by persons other than the owner of the surface of soil, except growing crops."

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 19, 1931.

Hon. H. W. Owens,
Judge of Probate, Henry County,
Abbeville, Alabama.

1. County depository held not to be a county officer.

2. In case commissioners court or board of revenue fails to procure a bank that is willing or can act as county depository, then, in this event it becomes their duty to elect an acting treasurer of the county under Section 322, Code of Alabama, 1923.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of October 31, 1931, in which you request my opinion as follows:

1st. Would a county depository be classed and termed a county officer or employee, and thereby required to furnish bond in such surety company?

2nd. In the event such depository be so classed or termed a county officer or employee, be unable to furnish such bond, what course would such court or board pursue, in order to obtain a treasury department?

Answering your first inquiry, a county depository has been held not to be a county officer.

Biennial Report of Attorney General, 1926-1928, p. 464.

Answering your second inquiry, will say that if the commissioners court or board of revenue is unable to procure any bank that is willing, or able, to act as depository for the county, then, in this event, it becomes the duty of such board or court of county commissioners to appoint an acting treasurer for said county under Section 322, Code of Alabama, 1923, which is as follows:

"322. If no depository designated, treasurer appointed.—If the board of revenue or court of county commissioners are unable to designate any depository for the county funds in their county by reason of their inability to secure from any bank within its limits terms for the handling of the county funds as provided in this article, satisfactory to such boards of revenue or courts of county commissioners, then such boards may designate some individual who may act as treasurer of such county under such terms and conditions as may be fixed by said courts of county commissioners or boards of revenue."

I call your special attention to an opinion of the Attorney General (Biennial Report of Attorney General, 1928-1930, p. 405). This opinion is written to the Chief Examiner of Accounts, and goes very exhaustively into all the matters pertaining to depositories and county treasurers.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 20, 1931.

Hon. W. S. Jones,
Sheriff, Lee County,
Opelika, Alabama.

Convicts—Feeding of juveniles.

Opinion by Assistant Attorney General McCall.

Dear Sir:

Your letter of October 26, 1931, received. You state:

"Fees were deducted from my last feeding account against the State for two prisoners held in Lee County Jail with the explanation that one was a Juvenile and the other was held on a charge of non-support. I understand that all juveniles should be charged to the county and likewise all non-support cases, but I am uncertain as to the procedure to take in the above special cases.

"The juvenile is held on a commitment from the Mayor of Phoenix City and is bound over to the Grand Jury without bail on a charge of rape. I should think that this would be a state charge as the Juvenile Court has no authority to try this case. As I see it, I have no authority to transfer this prisoner to the Juvenile Court.

"The prisoner charged with non-support was sent to Lee County Jail from Russell County under orders of the Sheriff of that County and Dr. Andrews, State Prison Inspector. This prisoner was later turned over to Jefferson County authorities by order of Sheriff of Russell County."

You request my opinion:

"How should charges in such cases be handled?"

In answer will state that the expense of feeding a juvenile under sixteen years of age who has been committed to the county jail for holding should be charged against the county **and not** the state. Section 3554 deals with how and when juveniles may be committed to jail.

The latter part of Section 3529 of Chapter 100, Code, provides:

"All expenses necessary or appropriate to the carrying out of the purposes and intent of this chapter (100) and all **expenses** of **maintenance** and cost of wards of the court that may be incurred by order of the court in carrying out the provisions and intent of this chapter, shall be **valid charges and preferred claims** against the county and shall be paid by the county treasurer when itemized and sworn to by the creditor or other persons knowing the facts in the case, and approved by the judge."

In my opinion a juvenile delinquent, **or child** as described in Chapter 100, Code of Alabama, 1923, is not a "prisoner" as that expression is used in the Act "to regulate the feeding of prisoners in county jails; to provide the manner and method of payment therefor," approved September 29, 1923 (General Acts 1923, p. 704) as amended by an Act approved September 6, 1927, (General Acts 1927, pp. 693, 694, 695). See Sections 4825 et seq, Code of Alabama, 1923.

A careful reading of Chapter 100, Code of Alabama, 1923, particularly Sections 3553, 3554, and 3557 shows clearly that where a child is committed to a jail as a juvenile delinquent, the child is a **ward** of the court, and is not a prisoner in the general and accepted sense, and hence the law as to feeding "prisoners" has no application to such juvenile delinquents, the expenses for the maintenance and care of which are proper charges against the county under authority of Section 3529, Code, supra.

This office has held that a person under sixteen years of age committed to jail on a felony charge is a ward of the court and not a prisoner insofar as the law of feeding prisoners is concerned.

Whenever a child under sixteen years of age is brought before a magistrate or any court in the county other than a juvenile court charged with any offense, such magistrate for such court shall forthwith by proper order, transfer the case to the Juvenile Court of the county. This appears to be a mandatory provision of Article 1, of Chapter 100, Code of Alabama, 1923.

In this connection, see:

Macon vs. Holloway, Judge, 96 So. 933,
Hort vs. State, 113 So. 471,
Section 3539, Code of Alabama, 1923,
Opinions Attorney General, 1926-28, pp. 587, 540.

You will observe that Section 3529 is part of an Act approved September 18, 1923 (General Acts 1923, pp. 296, 317) and is later in point of enactment than certain other parts of the same article in which it appears in the Code.

See also:
Opinions Attorney General, 1928-30, p. 15,
Opinions Attorney General, 1926-28, p. 562 (at 564).

As to persons charged with non-support or convicted thereof, such persons are "prisoners" for the feeding of which the State is liable.

Opinions (Off. Ed.) 1928, Vol. 7, p. 126,
Opinions (Off. Ed.) 1924, Vol. 1, p. 63,
Section 4480 Code of Alabama, 1923.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 20, 1931.

Hon. John S. Mooring,
Assistant to State Tax Commission,
CAPITOL.

"County Fair"—What is. Exemptions Street Fairs license when operated by or under auspices of a county fair.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of November 18, 1931. You refer to Section 15, Revenue Acts, 1927, (General Acts, 1927, p. 156) which reads as follows:

"Section 15. STREET FAIRS.—Each person, firm or corporation operating or conducting an exhibition commonly termed "Street Fair," shall pay to the State a license as follows: For an exhibition operating or composed of, or controlling or embracing not more than Ten exhibits or devices, Three Hundred Dollars ($300.00); but where more than ten and not exceeding twenty-five devices, Four Hundred Dollars ($400.00); and where there are more than twenty-five devices, Seven Hundred and Fifty Dollars ($750.00); for each place where said street fair is conducted. This license shall entitle the street fair to be operated for a period of not exceeding two weeks in any one place at any one time. Provided, that the provisions of this section shall not apply to any street fair or carnival operated by or under the auspices of State Fairs, County Fairs, or District Fairs."

You state that in Dale County a gentleman is engaged in "putting on" fairs and like exhibitions and the American Legion is trying to give what is termed a "Fair." This gentleman frankly confesses that the object is profit and no profit can be made unless exemption from the Street Fair license can be secured. The parties interested in this project have naturally tried to arouse as much business interest in it as possible and no doubt have secured the approval of a considerable number of citizens. They propose to offer certain premiums and to conduct some sort of a Fair.

You request my opinion:

Is such Fair exempt from Street Fair License where a street fair is held in connection therewith?

A "County Fair" is not of necessity a fair conducted by the County. In fact, most all "County Fairs" in Alabama are ordinarily conducted by private corporations, associations of persons, public societies, or groups of individuals usually formed temporarily for such purpose.

A County Fair is an exposition where the industrial products of the people of the county are exhibited as a display of the success, workman-

ship and art of the exhibitors, and to obtain such premiums as may be paid by the owner or owners of the fair as a reward for excellence. This is the main purpose of a County Fair.—**State vs. Long,** (Ohio), 28 N. E. 1038. It is a "matter of common knowledge that it has long been the custom for private associations to organize and hold fairs in many of the counties of the agricultural sections of this country."—**Earle vs. Dade Co.** (Fla.) 109 So. 833.

A fair includes the idea of a place of amusement naturally sought by a large concourse of people attendant at a fair. The main idea of a fair may be that of buying and selling.—Corpus Juris "Fair." The carnival feature is only on incident of a fair. It is not the main purpose of the fair. The schedule mentioned by you treats the carnival feature as a subordinate feature of the fair. The people who operate the carnival feature operate it for profit at all fairs, and the fact that it may be so operated here is no reason why it should not be exempt from the license. The county fair proper is not usually operated for profit, though the fact that a profit is expected to be made makes it none the less a county fair. Admission fees may be charged, and it may still be a county fair. The American Legion, or one or two public spirited citizens may promote it and it is none the less a county fair.

Of course, the exemption feature may not be used as a subterfuge.

I am of the opinion that under the facts given in this case, this would be considered a county fair and no license should be charged for the street fair conducted in connection therewith.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

Gen. Act 1919
Sch. 61 p. 481

November 20, 1931.

The State Tax Commission,
CAPITOL.

Attention of Mr. J. R. Gamble:

Under the facts party held liable for Junk Dealers License.

Opinion by Assistant Attorney General Moore.

Gentlemen:

I have your letter of August 24th, to which you attach letter of the Decatur Hide and Poultry Company, which is as follows:

"For the last several years we have been engaged in the general Junk Dealers business in Decatur, Alabama, and have paid the Junk

Dealer's License. Beginning October 1, 1931, we will discontinue the Junk Dealer's Business proper, and will purchase old automobiles and wreck them and sell the parts will purchase parts and sell them. In this business there will be a surplus of parts that are not fit to sell as parts, and scraps, and there will be some scrap iron, etc., left over from this year which we propose to dispose of by selling to Junk Dealers in Birmingham, etc. No such scraps or surplus will be sold to the mills. All parts which we do not sell, as parts, will be sold to Junk Dealers, not to mills. (Of course in this business we will purchase and sell Hides and Poultry on which there is no license.)

"We feel, in this business as we propose to conduct it this fall, that the proper, and only license, to be paid, should be Automobile Accessories License, if any at all. We want your construction of the law applicable to the following cases, to-wit:

"1st. We will buy and wreck automobiles, buy automobile parts, sell parts, and whatever parts are left over that cannot be sold as parts, we will sell to Junk Dealers, and will dispose of whatever scrap iron, and parts we have left over from this year to Junk Dealers. What license is proper to be paid?

"2nd. We will buy and wreck automobiles, buy parts, and whatever surplus is left that we cannot sell locally we will sell to Junk Dealers in Birmingham or Nashville, etc., and will sell Automobile Parts. What license should be paid?

"3rd. We understand that to be a dealer, one must **buy** and **sell.** That both the elements of **buying** and **selling** must be present to constitute a **Dealer.** If this is the law could we not sell whatever Junk we might have on hand after October 1st without being liable for the license as a Junk Dealer?"

You request that I reply to his several inquiries.

From a careful reading of the letter it seems that this party is engaged in the purchase of automobiles, junking them and selling such parts as he can as accessories and selling the remainder as junk. It would appear that the party is still engaged in the junk business even though he buys the automobiles as a unit and later junks them. The mere fact that he sells to junk dealers seems immaterial.

Coming to the particular questions, I advise:

In answer to your first question it is my opinion that he is liable for the autmobile accessory license if the parts which he sells come within the definition of the term "accessory," and that he is also liable for the junk dealer's license.

The answer to the second question is the same. I do not see wherein selling part of the junk in Birmingham or Nashville affects the liability for the license.

The answer to the third question is in the negative. The mere fact that he had purchased said junk prior to October first and disposed of the same thereafter cannot in any wise affect his liability for a license if he is in business after October 1st.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 21, 1931.

Hon. E. W. Long,
Judge of Probate, Walker County,
Jasper, Alabama.

License on pool tables is on the table and the exemption given disabled veterans is not applicable thereto.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of November 7, 1931, in which you ask:

"Please advise me if the exemption will apply for World War Veterans on Schedule No. 143, Pool Tables on which the State and County License is thirty-seven and 50-100 dollars. We have a veteran here in Walker County who has been advised that the exemption does apply.

"He operates four tables."

In reply I beg to advise that I do not think the exemption afforded disabled veterans applies to the license on pool tables.

Schedule 86 of the Revenue Act of 1919 provides:

"For each pool table, etc."

It therefore appears that the license is on the table and not on the operator for the privilege of engaging in the business. The exemption is from business or occupational licenses, and therefore, as the license on pool tables is on the table itself, it is my opinion that the exemption does not apply.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 20, 1931.

Hon. J. M. Buchanan, Member,
Board of Roads and Revenue, Russell County.
Girard, Alabama.

1. The opinion of this office to Hon. John A. Dickerson of date November 16th, 1923—Biennial Report 1922-24, page 256, has been upheld in toto by the Supreme Court of Alabama in the comparatively recent case of Garrison, Judge, vs. Summers, 134 So. 675.

2. A member of the Board of Roads and Revenue of Russell County being financially interested in the Girard Concrete Company, a partnership or corporation, cannot legally sell pipe to said Board for use on the public roads of said county.

Opinion by Asisstant Attorney General Evans.

Dear Sir:

Receipt of your letter of October 30th, 1931, is acknowledged. You write as follows:

1. "Please advise me if the opinion rendered by the Attorney General on November 16th, 1923, to Hon. John A. Dickerson, Prattville, Alabama, and being reported in Biennial Report of the Attorney General of Alabama of October 1st, 1922, to September 30th, 1924, page 256, has been overruled.

2. "The Board of Roads and Revenue of Russell County desires to purchase certain pipe from the Girard Concrete Company on account of the convenience of location where manufactured and cheapness of price. A member of the Board of Roads and Revenue of Russell County is financially interested in said Girard Concrete Company."

You wish to know if it is legal for said Board to make such purchase.

In reply to the first question will say that the Supreme Court in the comparatively recent case of Garrison, Probate Judge vs. Summers, 134 So. 675, held exactly in accordance with what was stated in said opinion of this office to Hon. John A. Dickerson. That opinion to Dickerson was written by Judge O. B. Cornelius, Assistant Attorney General. While some opinions have been written by this office not in accord with that opinion to Dickerson, the opinion of the Supreme Court, since it has passed on the matter, is the law. The Supreme Court fully sustains the opinion to Dickerson in every respect. The statute there passed on is now Section 5076 of the Code of 1923.

In answer to question two will say that the answer thereto involves a construction of Subdivision 2 of Section 5003, as well as Section 5024.

Subdivision 2 of Section 5003 of the Code of Alabama reads as follows:

"Every public officer who shall—

"2. Be beneficially interested, directly or indirectly, in any contract, sale, lease, or purchase, which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his office, or accept, directly or indirectly, any compensation, gratuity or reward from any other person beneficially interested therein, shall be fined not more than one thousand dollars and may be sentenced to hard labor for the county for not more than six months and any contract, lease, sale, or purchase mentioned in subdivision 2 hereof shall be void."

Section 5024 of the Code reads as follows:

"County officer interested in county contracts, or hire of county convicts.—Any judge of probate, tax collector, tax assessor, sheriff, clerk of the circuit court, solicitor, or county treasurer, members of the court of county commissioners or board of revenue, or any other state or county officer who takes any contract for work or services of the county, or is employed in any way under such contract, or is interested in any contract for hire of county convicts, or sells any goods or supplies to the county, or is in any wise pecuniarily interested in any such contract or sale, as principal or agent, must, on conviction, be fined not less than fifty nor more than one thousand dollars, and may be imprisoned in the county jail, or sentenced to hard labor for the county for not exceeding twelve months; but nothing in this section shall apply to the sale or purchase of drugs or medicine for the use of prisoners or paupers."

Considering each of these statutes, will say that, in my opinion such a purchase is not legally permissible.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 21, 1931.

Hon. S. R. Butler,
State Tax Commissioner,
CAPITOL.

State Tax Commission authorized to collect permit fees due for years prior to 1931 which have not been paid.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 2nd, 1931, in which you state:

"Under provisions of an Act of the Legislature, approved February 21, 1931, (H. B. 222) it is made the duty of the State Tax Commission to issue annual corporation permits and receive fees therefor. This Act of the Legislature was silent on the question of delinquent permit fees, that is, permit fees due by corporations for years prior to 1931.

"Your opinion is requested as to whether it is the duty of the State Tax Commission to issue an annual permit for any years prior to 1931 and collect the fees due the State for same where application has been made by corporation for a permit for a year prior to 1931 and the required fee tendered for same.

"We also request your opinion as to whether the State Tax Commission has authority to require a permit fee to be paid to the State by such corporations as fail to procure permits as required by law (Sections 42 and 43, Revenue Act 1927) for any year prior to 1931.

"We quote from a decision of the Supreme Sourt of Alabama, 3 Div. 958, October Term, 1930-31, Elliott Addressing Machine Company v. Pete B. Jarman, Jr., as Secretary of State of Alabama:

" 'Under the Act of 1927, it was the duty of the Secretary of State to issue the permit, but Section 1 of the Act of 1931 changes Section 42 of the Act of 1927 to the extent of requiring that application be made to and the permit be issued by the State Tax Commission instead of the Secretary of State.

" 'The new Act also made it the duty of the Secretary of State to immediately deliver to the State Tax Commission all money, checks, drafts and like instrument received by him, and all books, records and supplies kept or used by him under the provisions of this Section. It is therefore manifest that the said Jarman, as Secretary of State, had no authority to issue the permit after the 21st of February or when this petition was filed on February 23rd, 1931. Mandamus will not, of course, lie to compel one official to discharge a duty devolving upon another official body'."

In reply to your first question I advise that, in my opinion, you have the authority to issue an annual permit for the years prior to 1931 and collect the fees due the State for same.

The reply to your second question is likewise in the affirmative. As I construe the Act of 1931 transferring the collection of the permit fee from the office of the Secretary of State to the office of the State Tax Commission all the rights, powers, and duties which belong to the Secre-

tary of State with reference to the collection of such taxes were transferred to the State Tax Commission. It is, therefore, the duty of the State Tax Commission to issue any and all delinquent permit fees due for years prior to 1931 as well as for 1931 and subsequent years.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 23, 1931.

Hon. H. E. Kendrick,
Tax Collector, Dallas County,
Selma, Alabama.

Construction of Act No. 578, approved October 1st, 1923 (Acts, 1923, page 750) Section 212 of Compilation of Revenue Laws, 1929.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Receipt of your letter of September 24, 1931, is acknowledged. You make the following statement of facts:

First, "A" returns for assessment real and personal property, with which he is duly assessed as provided by law. "A" disposed of his personal property, or his personal property is not sufficient to make the taxes assessed to "A." "B" comes in to pay the tax on the real estate only, leaving the tax assessed on the personal property unpaid.

Second, "A" assesses real estate and personal property. "B", "C", and "D" each hold a mortgage on separate parts of the real estate. "A" disposes of the personal property so that it canont be found by the Tax Collector; or disposes of enough of the personal property so that the remainder is not enough, when levied on and sold, to pay the taxes assessed on the personal property. "B" and "C" come in and each pays the taxes on the part of the real estae that he has a mortgage on. "D" then wishes to pay the taxes assessed on the real estate upon which he has a mortgage.

You ask my opinion as to the duty and responsibility of the Tax Collector in each of the cases named, considering the provisions of Act No. 578 approved October 1st, 1923 (Acts 1923, page 750) (Section 212, 1929 Compilation Revenue Laws.)

In reply will say that there was no legislative intent in said Act to relieve the Tax Collector, to any extent, in collecting the taxes due the State or County. Where the book of assessments has been completed as

providd by Section 43, of Act No. 172, approved August 22nd, 1923, (Acts 1923, page 177) and the certificate required by said Section is delivered to the Tax Collector as required by Section 44 of said Act, such certificate is "the warrant of the Tax Collector of the County to proceed to collect such taxes in the manner directed by law" and renders the Tax Collector and his bond liable, if he fails to collect, where there is no legal excuse for such failure.

Ad valorem taxes, duly assessed, become payable October 1st (except in cases otherwise provided) and delinquent January 1st following.

Said Act No. 578 reads as follows:

> "Section 1. That any lien holder or mortgagee or real estate included in an assessment with other real estate of the person or corporation to whom the real estate was assessed or subject to the lien of taxes upon other real estate may pay the proportionate or ratable part of taxes upon such real estate purchased by him or subject to his lien or mortgage without paying the entire amount of taxes due by the person to whom such real estate is assessed, if such person to whom such real estate is assessed, or for whose taxes said sold or encumbered property is subject to tax lien, has sufficient other real estate or personal property returned or assessed and subject to levy or sale out of which the remainder of the taxes may be collected by the Tax Collector, provided that the portion of the real estate sought to be redeemed is valued separately in the assessment, if it be less than all the real estae included in the assessment."

Your questions are confined to the privilege of a mortgagee or of mortgagees or real estate, and it is simpler to confine my opinion to such mortgagees.

Several conditions are laid down as prerequisites to the exercise of the privilege by a mortgagee of paying the proportionate or ratable part of the taxes upon the real estate subject to his mortgage. These conditions are as follows:

(a) The real estate upon which the mortgage is held must not be all of the real estate assessed. The statute says: That any mortgage on real estate included in an assessment with other real estate of the person to whom it is assessed.

In the first statement of facts above copied from your letter there was no other real estate in the assessment than that covered by the mortgage. Consequently said Act No. 578, which is Section 212 of the 1929 Compilation of Revenue Laws, has no application to the case stated.

(b) In order for a mortgagee to be entitled to pay the proportionate or ratable part of the taxes on the part of the real estate of a taxpayer upon which he holds a mortgage, such part of the real estate must be

separately valued in the assessment. If the part conveyed by the mortgage is not separately valued from all the other real estate included in the assessment, the provisions of said Act No. 578 do not apply. Where the real estate included in the mortgages is lumped with other real estate included in the assessment in fixing the assessed valuation of said real estate the provisions of said Act do not apply.

In your statement of facts you fail to state whether or not the mortgaged lands included in the assessment were separately valued.

(c) There must be more land included in the assessment than there is included in the mortgage; the land included in the mortgage must be valued in the assessment separately from the other lands included in the assessment, and if there is personal property included in the assessment, this must first be proceeded against for the payment of all the taxes assessed against the taxpayer and sold before the Tax Collector can know what part of the taxes, costs, fees and charges remain a lien on the real estate. The Tax Collector must know what he is doing, and not just guess at it. All such privileges are allowed by the Tax Collector at his risk. His judgment being at fault does not relieve him of his liability.

You cannot know at any time what the proportionate or ratable part of the taxes (which includes at the times all costs, fees and charges) is on the real estate until the personal property shall have been levied on and sold and the proceeds credited on the whole amount of the taxes. When that has been done, then the proportionate or ratable part of the taxes, fees and costs still due is governed by the ratio of the assessed value of the real estate which was included in the mortgage to the assesed value of all the real estate included in the assessment.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 27, 1931.

Mr. Harry H. Jones,
Secretary-Treasurer,
Board of Registration of Architects,
421 Shepherd Building,
Montgomery, Alabama.

Construing Section 8 of an Act approved July 17, 1931, which Act creates a State Board for Registration of Architects.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of November 17, 1931, in which you request my opinion as follows:

"Where an architect secures a State license to practice as an architect after July 17, 1931, which license is issued for a period of six months being retroactive to May 1st and extending through October 31st, can the holder of such license claim that he was operating under a license of the State prior to July 17, 1931, so as to be able to come under the provisions of Section 8 of an Act approved July 17, 1931, which Act created the State Board of Registration of Architects?"

It is my opinion that he does not come under the provisions of Section 8 of the Act, supra, which section is as follows:

"Section 8. The Board shall receive applications for registration as an Architect only on forms prescribed and furnished by said Board and upon receipt of such application and the payment of a fee of $25.00 to said Board shall issue to such applicant a certificate of registration as an Architect provided such applicant meets the following requirements. 1. Any person, who is at the time of the passage of this Act, engaged in the practice of Architecture under a license in this State and who shall present to the said Board an affidavit to that effect within ninety days, after the passage of this Act shall be entitled to receive such certificate to practice architecture without an examination by said Board. * * *"

You will note the above section says among other things: "Any person, who is at the time of the passage of this Act, engaged in the practice of Architecture under a license in this State." This could mean but one thing, and that is he must have been practicing architecture on July 17, 1931, the date of the approval of the Act **under a license in this State.** I construe this to mean if a person was on this date practicing archtiecture, but without a license, no matter how competent he may have been he cannot take advantage of its provisions, and the fact that he some time after the approval date of this Act, took out a license which authorized him to practice architecture in Alabama from May 1st of this year to October 31st of this year, could make no difference for by not having a license at the time of the approval of this Act, which was July 17, 1931, he automatically waived his right to claim immunity from examination as provided by the Act.

The wording of this section is plain, and where there is no ambiguity in the wording, there is no room for construction. Therefore, we must follow the plain meaning of the words employed.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 27, 1931.

Hon. A. B. Hinson, President,
Marengo County Board of Revenue,
Linden, Alabama.

Bonds—County depository and treasurer of county funds in lieu thereof.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of November 19, 1931, in which you inquire as follows:

"1. Has the County Board of Revenue the authority to pay out of county funds the premium which will be required on the bond to be given by the county depository designated under Section 316, Code of Alabama, 1923?

"2. If, in the event no county depository is designated, does the county pay the premium on the bond of the person so selected as treasurer of county funds in lieu of the depository under Section 322, Code of Alabama?"

I am of the opinion that your first question should be answered in the negative. The bank so designated as county depository is not a county officer within the contemplation of Section 2658, Code of Alabama, 1923. It is a mere contractual agency to perform the functions of a treasurer. —**Compton vs. Marengo County Bank**, 203 Ala. 129. Therefore, the county can not pay the premium on the bond of the county depository under said section.—**Opinions Attorney General**, 1926-28, p. 464.

The bond of said depository cannot be paid under Section 2 of an Act approved July 3, 1931 (No. 478, H. 183), as same, in my opinion, is applicable only to instances that were not otherwise heretofore provided for as regards county employees entrusted with the handling of public funds.

In answer to your second inquiry, I am of the opinion that the premium on bonds of the person designated as treasurer of county funds in lieu of the county depository under Section 322, Code of Section 322, Code of Alabama 1923, may be paid by the county, by virtue of Section 322, Code of Alabama, 1923. Although the person so designated may not be a county officer within the contemplation of Section 2658, Code of Alabama, 1923, yet under Section 322, the person so designated acts as treasurer **under such terms and conditions as may be fixed by said County Board of Revenue or Court of County Commissioners.**

But it must be borne in mind that this Section is construed in pari materia with Sections 316-7, Code of Alabama, 1923, relative to the amount of the bond and term of office.—**Jenkins vs. ex rel Watson**, 219 Ala. 554.

Section 2 of an Act approved July 23, 1931 (No. 478, H. 183) is not applicable to the instant case, for, as stated above, said Section is applicable only to those instances as were not otherwise heretofore provided for.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 28, 1931.

Hon. H. W. Owens,
Judge of Probate, Henry County.
Abbeville, Alabama.

Resident of Alabama cannot legally operate tag of another state on the public roads in Alabama.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of November 6th in which you state:

"A resident of Alabama purchased an automobile in Georgia in April 1931, for which automobile a tag had been purchased in Georgia in March 1931, for the tag year of 1931.

"The seller of the automobile delivered the automobile to the purchaser in Alabama, and the purchaser in Alabama was cited for operating a car without a tag.

"How long could the purchaser operate said car in the State of Alabama before being required to purchase a tag in the State of Alabama."

In reply I beg to advise that if the party were a resident of Alabama he could not use the Georgia tag at any time. The thirty days which are allowed to non-residents coming into the State, does not apply to residents of Alabama.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 28, 1931.

The State Tax Commission,
CAPITOL.

Attention: Mr. John S. Mooring.

1. License on filling station provided by Section 20, Acts 1927, p. 139, is on the operator measured by the number of pumps or fillers.

2. Where person takes out proper licenses in such filling station, unless products are sold not usually sold or handled, he is not liable for the chain store license.

3. Tax on lubricating oils provided for by Section 27, Acts 1927, p. 139, is a license tax on the distributor, retail dealer or storer measured by the number of gallons sold.

Opinion by Assistant Attorney General Moore.

Gentlemen:

I have your letter of October 27th in which you state:

"We are in receipt of your opinion to the effect that when a person takes out a specific license for engaging in the business of selling certain articles and does not sell any other articles than those covered by the license taken out, such person cannot be held liable for the chain store license. For example, a person taking out a license for the sale of soft drinks, another license for the sale of cigarettes, and another license for the sale of cigars, would not be liable for the chain store license, unless he sold something else besides soft drinks, cigarettes or cigars.

"This opinion will necessarily require that it be determined in many instances what is covered by the specific license paid. The first case of this sort which has been brought to the State Tax Commission for decision is the license for gasoline filling stations, as levied in the Acts of 1927, page 139, Section 20. You will observe that this license is levied on 'each person, firm or corporation operating for profit a gasoline filling station or pump,' and you will note that the amount of this license is determined by the population of the city in which the business is conducted and by the number of pumps used. We think it can be successfully shown that a filling station is usually a place where lubricating oil, as well as gasoline, is sold and there is no specific license paid by filling station operators for the sale of lubricating oil. Therefore, a chain store license would be due by the operators of filling stations, unless the specific license on filling stations, as levied in the schedule referred to, covers the sale of lubricating oil.

"Please advise us whether in your opinion operators of filling stations should be required to pay the chain store license when such operators sell lubricating oil as well as gasoline."

In reply thereto I advise that in the last analysis the question is one of fact. If the filling stations are in fact selling products not covered by a special license, then, in my opinion, they would be liable for the license provided for in House Bill No. 111 by Mr. McNeel known as the Chain Store Act. Section 20 of the Act of 1927, p. 139, levies a license on filling stations in the following language:

"Each person, firm or corporation operating for profit a gasoline filling station or pump, etc."

It will be seen that while the amount of license is measured primarily by the number of pumps or fillers used, and, secondarily, by the size of the city or town where located, yet the license seems to be on the business of operating for profit a gasoline filling station. The word "pump" was added, I think, to provide for a license on those filling stations which consist of a single pump as to which claim might be made that they did not constitute a filling station. The license, however, seems to be on the operator measured by the number of pumps or fillers used. Lubricating oils are products usually sold at filling stations, and I think would be covered by the filling station license.

Moreover, by Section 27, Acts 1927, p. 139, a license of two cents per gallon is provided for every distributor, retail dealers or storer of lubricating oils as defined in the Act. This tax is similar to the tax levied by the gasoline Acts, and the license therefor is on the distributor, retail dealer or storer, and is not a sale tax on the product. This tax is paid but once, but if by the retail dealer, then he is paying a license for dealing in lubricating oils.

The same rule applies to gasoline.

It may be that there are other products sold by filling stations not within the definition of lubricating oils as used in the Act, and which are not such products as are commonly sold at filling stations as a part of the business. If this be true, then naturally the license provided for by the McNeel Act applies. That, however, is a question of fact for you to determine. Admitting, however, that the only products sold are gasoline and lubricating oils as used in the statutes above referred to, then, it is my opinion, that the tax provided for by the McNeel Act is not chargeable provided they have taken out the proper licenses for operating a filling station, and are selling only the products usually sold at such places.

The foregoing, of course, is predicated on the correctness of the opinion recently rendered you holding that where a person pays a special

license for a special privilege, and sells no other thing or does no other act, he is not liable in addition thereto for the "store" license.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

November 28, 1931.

Hon. Guy Kelley, Secretary,
County Road and Bridge Commission,
Cullman, Cullman Co., Alabama.

Counties—Transfers of county funds to meet overdrafts in special funds.

Opinion by Assistant Attorney General McCall.

Dear Sir:

This acknowledges receipt of your letter of October 5, 1931. In it you state the following:

"The special road and bridge fund of Cullman County is overdrawn $48,000.00. This overdraft dates back to 1926. There is also a Road Bond Refunding Fund to take care of bonds amounting to $160,000. This account should have about $44,000.00 in it. However it is empty. The Commissioners Court and the Probate Judge contend that the $44,000.00 should be paid back to this Bond Refunding Fund. The overdraft is not a debt but merely a transfer of money from one fund to another. The County Commissioners and Probate Judge are endeavoring to hold 'the gasoline tax, the Special Road and Bridge Fund levy,' to balance up this overdraft. 'This overdraft really came about through a transfer of funds from the general fund of the county to the Road and Bridge Fund, but the county commissioners are trying to hold it to replace the $44,000.00 that should be in the Road Bond Refunding Fund, a sinking fund, taking care of $160,000.00 bonded indebtedness of said county.'"

You request my opinion:

"Under the foregoing statement of facts is there any authority of law to withhold any portion of the revenue coming from the gasoline excise tax or from the county Road and Bridge Fund levy to pay back to the Road Bond Refunding Fund the $44,000.00 due to be in it?"

The facts as stated in your communication are not full enough to make definite answer to you without dealing in some assumption. I will state those assumptions and it is upon them that this opinion is based.

Of course if I am incorrect in my assumptions, then I request that you give a more definite statement of facts.

Section 215, Constitution limits the power of the Legislature to grant a county authority to levy ad valorem taxes.

State vs. Street, 117 Ala. 210.

A county has no inherent power of taxation. All authority of a county to levy taxes must be given by the Legislature.

State vs. Street, supra.

The authority of the Legislature in granting power to a county to levy ad valorem taxes upon the taxable property therein is limited to a rate not greater, in any one year, than one-half of one per cent. To this general limitation there are two general exceptions; and the power of the Legislature with reference to these two exceptions is also limited. Under the first proviso or exception in Section 215, Constitution, the Legislature may grant to a county authority to levy upon the taxable property in the county for the purpose of paying **debts existing on December 6, 1875,** a tax at the rate of not exceeding one-fourth of one per centum. With this exception we are not concerned in the present enquiry. Under the second proviso or exception in Section 215, Constitution, the Legislature may grant to counties authority to levy upon the taxable property in the county for the purpose of paying debts or liabilities created for the "erection of necessary public buildings, bridges or roads" a tax at the rate of not exceeding one-fourth of one per centum to be applied "exclusively to the purposes for which the same" is levied and collected. **I assume that the revenue derived only from this tax is what you term the "Special Road and Bridge Fund."** I assume also that the Road Bond Refunding Fund was made up of transfers from the above mentioned Special Road and Bridge Fund, and that thereafter the $44,-000.00 balance in such Bond fund, instead of being paid out on the bonds, was spent on county roads. This being the case there should be transferred as soon as possible from the above mentioned Special Road and Bridge Fund a sufficient amount to cover the balance due to be on deposit to the credit of said Bond Fund.

However, your letter indicates this is impossible at the present moment for the reason that said Special Road and Bridge Fund is overdrawn approximately $48,000.00. Under the circumstances a transfer from the County General Fund to the Special Road and Bridge Fund and to the Road Bond Fund sufficient to adjust the same could be accomplished **provided there is an actual surplus in the general fund over and above the amount necessary to pay all outstanding indebtedness, not only the indebtedness that does exist but also there must be a surplus over and above the amount necessary to pay those things that are primary obligations on the general fund for the year.** Unless the general fund shows a surplus after consideration of the conditions above specified any trans-

fer from it to the Special Road and Bridge Fund would be contrary to law.

Opinions Attorney General, 1926-28, p. 244,
Opinions Attorney General, 1920-22, pp. 117, 118,
Rhodes vs. Marengo Co. Bk., 205 Ala. 667, 88 So. 850, Section 1351, Code of Alabama, 1923,
(re-enacted as Section 161, Ala. Highway Code, 1927)
Section 8, Act No. 37-H-116-St. John, approved Feb. 16, 1931, as amended by Act No. 447-H-985, approved July 17, 1931.

The gasoline excise tax revenue coming to your county from the State must be kept separate and apart from all other funds general or special and no part of same can be used in honoring warrants drawn against any other fund, nor can any part of same be transferred to any other fund.

Opinions Attorney General, 1922-24, pp. 91, 281.

Nor can any debt be created against it.

Opinions Attorney General, 1928-30, pp. 487, 638,
Opinions Attorney General, 1926-28, p. 643.

The court of County Commissioners of your county has no jurisdiction over the road and bridge funds of the county.

Sections 2 and 3, Act, 1931, supra.

This, of course, pretermits any question as to constitutionality of the Act of 1931 above cited.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 3, 1931.

The State Tax Commission,
CAPITOL.

Attention: Mr. John S. Mooring.

House Bill No. 111 by McNeel known as the Chain Store Act, provides for the payment of a license to the State and does not provide for the payment of a County License.

Opinion by Assistant Attorney General Moore.

Dear Sir:s:

I have your letter of November 16th in which you make the following inquiry:

> "Please refer to Section 362, Acts 1919, page 282, and advise us whether this section applies to the so-called chain store act recently enacted by the Legislature."

In reply thereto I beg to advise that it is my opinion that the provisions of Section 362, Acts 1919, p. 282, are not applicable to the license provided for by Act No. 369, being House Bill No. 111 by McNeel, known as the Chain Store Act.

The latter Act provides for a license on stores which license is made payable to the State Tax Commission, and the State Tax Commission is given entire supervision, authority and responsibility for its enforcement. There is no provision in the Act for its enforcement by and through the license inspectors of the State, or payment to the probate judges as generally is the case in the license referred to in Section 362 of the Revenue Act of 1919. The intent of the entire Act seems to be the levy of a State tax for State purposes alone. The proceeds are paid into the State Treasury, and there is no provision for the payment of any sum into the County Treasury or County Depository.

The license year is different from the customary license year, and the proceeds are credited to the Educational Trust Fund, indicating I think that the "store" license is a State license, to be wholly State administered and the proceeds to go to a special State purpose.

In the absence of any specific provision in the Act for the payment of a county license, I am of the opinion that only a State license was intended and so hold.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 3, 1931.

State Tax Commission,
CAPITOL.

Attention: Hon. John S. Mooring.

Under facts set out bottling company held liable for license on branch warehouse.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I am in receipt of your letter of September 18, 1931, in which you state:

> "On June 19, 1931, you rendered an opinion in reference to the liability of bottling concerns, who sell soft drinks from warehouses located in some place other than the place where the bottling is done; for instance Dr. Pepper Bottling Co., at Montgomery, and the Orange Crush Bottling Co., at Birmingham, each has a warehouse in Selma. Both of these concerns send out trucks, in the usual way, from the Selma Warehouse. Sales are not made at the warehouse any more than they are made at the bottling plant nor are orders received at the warehouse and probably very few, if any, received at the bottling plant. The custom of this business is to sell from the truck, as you are probably aware. Trucks are loaded up and have a regular route, the truck drives up to the retail dealer's place, the driver gets up empty cases and bottles and sells and delivers what the retail dealer uses at the time. The License Inspector at Selma writes us that he does not think that the warehouse is kept open and sales made at the place to any one at all, but that the driver of the truck goes about the town and county, selling out his load to different merchants and then returns to the warehouse, gets another load and sells that out also. The warehouse is the base of supply to Dallas and adjoining counties and is the established place of business for replenishing the trucks with necessary supplies, which supplies are sold from the truck as explained."

Under the facts set out by you it is my opinion that the Dr. Pepper Bottling Company at Montgomery and the Orange Crush Bottling Company at Birmingham are liable for the license on their warehouse in Selma. Under the facts set out by you while apparently the sales are not made at the warehouse itself, they are made therefrom, and I cannot see wherein the case is essentially different from that ruled on in my opinion of June 19th. This is not a case where an order is taken to be sent to Birmingham or Montgomery, and the order merely filled from the storage warehouse at Selma, but to the contrary merchandise is taken from the warehouse at Selma to be sold and in my opinion the situation so far as liability for license tax is the same as if the sale were actually made at the warehouse.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 4, 1931.

State Tax Commission,
CAPITOL.

Attention: Mr. J. R. Gamble.

Identification Bureau; Liable for license under Schedule 39, Section 361, Acts 1919, page 282.

Opinion by Assistant Attorney General Lawson.

Gentlemen:

I have your letter of November 14, 1931, in which you request an opinion of this office on the following matter:

> "Would a person operating an Identification Bureau, the object of which is to secure individual finger prints and file them for the protection of the individual and also to install for Banks, Factories, etc., complete systems of identification, be liable for license under Schedule 39, Section 361, Acts 1919, page 282, which provides: 'Detective Agencies. Each person engaged in the business of operating a detective agency or each company or corporation doing business as such in the State, $50.00?'

It is my opinion that such a concern would be liable for such license. In the case of Smith vs. S. H. Kress & Co., 98 So. 378, is found the following definition:

> "A detective is one whose business it is to detect criminals or discover matters of secret and pernicious import, for the protection of the public. A private detective is one engaged by individuals for private protection. A private detective has again been defined to be 'a person unofficially engaged in obtaining secret information for the use and benefit of those who employ him and to pay his compensation.'"

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 10, 1931.

Hon. Thos. R. Fariss, Chairman,
Board of Registrars,
Montgomery, Alabama.

Elections—Residential requirements to register.

Opinion by Assistant Attorney General McCall.

Dear Sir:

This acknowledges receipt of your letter of November 19, 1931. In it you state that "A. B." came to Montgomery County in March, 1931, from another county in the state. You request my opinion:

> "Is "A. B." now eligible to register, if he **will have** been in Montgomery County twelve months before the next general election?

In answer will state that under the provisions of the first paragraph of Section 181, Constitution of Alabama, which became effective November 28, 1901 (Code, Vol. I, p. 428) in order for one to be qualified from the standpoint of residence to register as an elector he need not have resided in the State two years, the county one year, and the precinct or ward three months at the time **he offers to register,** but the requirements of said Section of the Constitution are as follows:

> "After the first day of January, nineteen hundred and three, the following persons, and no others, who, if their place of residence shall remain unchanged, **will have,** at the date of the **next general** election the qualifications as to residence, prescribed in Section 178 of this article, shall be qualified **to register** as electors; provided they shall not be disqualified under Section 182 of this Constitution."

Section 178 is part of Article VIII Constitution. Said Section fixes as the **residential** qualification **to entitle one to vote** "at **any** election by the people," two years in this State, one year in the county, and three months in the ward or precinct, "**immediately preceeding** the election at which he offers **to vote,**" with the proviso that any elector who, **within** three months **next preceding** the date of the **election** at which he offers to vote, has removed from one **precinct** or **ward** to another **precinct** or **ward** in the **same** county, incorporated town, or city, shall have the right to vote in the precinct or ward **from which he has so removed, if** he would have been entitled to vote in such precinct or ward, (at the time of the election) but for such removal.

Registration alone does not necessarily qualify one to vote in any election held **immediately after such registration.** Registration in **this** State is a means of determining not only those who **(other than** as to poll taxes due or to be due) (1) possess **at the time of such registration,** but also, (2) **those who will possess at the time of the next general** election **following such registration,** the qualifications of an **elector** in this State. Registration is an **official adjudication** either (1) that the person registered **has maintained** an unchanged residence in the State and County for the period required by Section 178, Constitution, and **meets** the ward or precinct qualifications there specified, or (2) that if such person so registered (and already a resident of the State, County, and precinct or ward in which registered), **continues an unchanged residence** in the State, and County and meets the precinct or ward residence qualifications, **until** the day of the next general election following his registra-

tion, that such person will then, so far as residence is concerned, be a qualified elector eligible at such general election and not until then (even though registered) to vote in any election by the people in this State.

Sections 183, 184, Constitution.

It should be kept in mind, incidentally, that mere registration is not conclusive that one is a citizen of Alabama nor does the fact that one presumes to be a qualified elector authorize him to vote regardlessly. He may be challenged and not be able to qualify. Section 185 Constitution. And of course election officers should properly challenge the proffered vote of every individual who, even though registered, does not then possess the residential qualifications prescribed by Section 178 Constitution.

It may be thought that the foregoing may lead to some confusion in the preparation of lists of qualified, registered electors, but there can be no difficulty in this respect if the various boards of registrars or judges of probate (as the case may be) and the Secretary of State will take care to see that their forms, reports, books and lists are so prepared and executed as to afford sufficient data on the constitutional and statutory eligibility requirements with regard to registration, returns there and preparation of lists of persons qualified to vote. Where a Board of Registrars registers one they should show in the record and return of the registration of such person when he became a resident of the State, County and ward or precinct, and, reckoning from that date, the Board of Registrars should show the date when such person will have been a resident of this State for two years, of the county in which registered one year, and of the ward or precinct in which registered three months. Care should be taken in the entry of this data to the ends that (1) the probate judge in preparing his list of qualified, registered electors for any election, general, primary or special, held on any date after such registration may not put such person's name on the list of qualified registered electors he is required to furnish election officers, and (2) to the end that such person may not exercise the elective franchise until he has completed the requsite period of residence.

In this connection see:

Section 387, Code of Alabama, 1923, as amended by Act approved August 20, 1927 (Acts 1927, p. 275)

Section 388, 453, 455, Code of Alabama, 1923.

Also Sections 386, 378, 380, 381, 382, 385, 389, 391, 392, 393 (as amended by Act of 1927, supra) 395, 396 Code of Alabama, 1923.
Also Sections 400, 401, Code of Alabama, 1923.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 11, 1931.

The State Tax Commission,
CAPITOL.

Act No. 340 (H. B. 833 by Kelly of Talladega) exempting Disabled Veterans from payment of license taxes violates no provision of the Constitution.

Opinion by Assistant Attorney General Carmichael.

Gentlemen:

I beg to acknowledge the receipt of your letter of October 8th, in which you request an opinion regarding the constitutionality of the Act referred to above. I have carefully noted everything set out in your letter.

Each and every provision of the Act in question has been carefully reviewed with a view of ascertaining whether any of the provisions of the Act in question violate any of the provisions of the Constitution.

In reply I beg to advise you that, in my judgment, no provision of the Act in question violates any of the provisions of the State Constitution.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 22, 1931.

Hon. J. H. Hard, Jr.,
Chief Examiner,
Department of Examiners of Accounts,
CAPITOL.

1st. The State Highway Department may take out compensation insurance to cover accidental injuries or death to its employees.

2nd. The payment of the premiums for such insurance may be made out of any fund appropriated for the purpose of construction or maintenance of roads or bridges.

3rd. Section 6 of the Highway Code of 1927 held constitutional.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have a letter of November 19, 1931, addressed to me by Hon. Walter K. Smith, former Chief Examiner of Accounts, in which he requested my opinion as follows:

> 1. Can the Legislature validly provide that the Highway Department may take out compensation insurance to cover accidental injury or death of its employees actually engaged in the construction, maintenance or repair of public roads and bridges?
>
> 2. Can the payment of premiums for such insurance be made out of any funds appropriated to the purpose of construction or maintenance of roads and bridges?
>
> 3rd. Is Section 6 of the Highway Code of 1927, constitutional which refers to this particular matter?

By Section 6 of the Highway Code of 1927 (General Acts 1927, p 348) it is provided:

> "* * * The State Highway Commission is authorized and empowered and may, with the approval of the Governor, enter into contract by bond or policy, with an insurance company authorized to do business in this State, covering a certain amount to be paid to the employees of the State Highway Department, actually engaged in the construction, maintaining or repairing of Public Roads and Bridges, who by accidental means may be killed or injured. Provided that the amount paid to any such party on account of accidental death or injury shall not exceed the amount or amounts as provided by the Compensation Act of this State. The premium upon such bond or policy shall be paid out of the funds of the State Highway Department as provided by law; and to that end and for that purpose the Department may with the consent and approval of the Governor disburse any monies hereby or otherwise appropriated or set apart for the construction, repair or maintenance of the public roads, bridges and highways of this State."

While this office has been asked for opinions as to whether or not the State, or some agency of the State, might take out compensation insurance, IN THE ABSENCE OF ANY LAW SO AUTHORIZING, and has advised that the State was not an employer within the terms of the Workmen's Compensation Act and could not come within that Act; the question of the validity of an Act specifically providing compensation by the State has not heretofore been presented. Those opinions of this office (1920-22, p. 61; 1926-28, p. 641; 1928-30, p. 699) above mentioned and to which you refer in your letter are without application.

The question is not whether the State may be made liable for injuries to an employee or suable because of such injury. The law as above

quoted creates no liabiliy, authorizes no suit, grants no right of action, nor does it make the Highway Department in anywise subject to the Workmen's Compensation Act. It simply vests the Highway Commission and the Governor with a discretion on the subject.

The provision made by the Highway Code for compensation insurance is a matter of public policy, as to which the Legislature is supreme, except as limited by the Constitution. I know of no constitutional inhibition with which this provision collides. It is analogous to pension allowances and to the allowance, by special legislative acts, to citizens for moral, but not legal, claims against the State. It would be useless to cite any authority for this statement. Numerous "relief acts" are passed by every legislative session, and numerous decisions of the courts have held them to be valid.

If the Legislature has the right to pass a single Act appropriating money out of the treasury for the purpose of compensating an individual citizen, in satisfaction of a moral obligation to him,—see State v. Clements, 320 Ala. 515 as an example—why could it not with equal validity enact a law applicable to more than one? Or, if it may make provision for the discharge of an obligation already in existence, why could it not make provision in anticipation of future obligations? I am of opinion that there is no reason.

While the State has protected itself against suits in the courts (Section 14 of the Constitution) it has in no wise undertaken to prevent the making of voluntary retribution in just cases. The Legislature, in enacting the quoted part of Section 6 of the Highway Code, must have had in mind the ever recurring question of relief acts; it must have had in mind the difficulty of justly disposing of claims against the State in this wise. If the State were legally liable there could be no question of the right of the Legislature to make provision for assurance against, or indemnity of such liability. The State can and always has discharged its moral obligations. Why, then could it not by the method adopted indemnify itself on account of its moral obligations?

It is my opinion in enacting the provision of the Highway Code here in question, the Legislature validly exercised its authority in the matter of public policy.

As to the payment of the premium for the insurance provided for, it will be observed that in the amendment to the Constitution, as well as the Acts of the Legislature it is prescribed that the funds to be derived from special levies are to be devoted to the construction, maintenance and repair of public roads and bridges. Amendment No. 11, referred to in your inquiry, not only provides that the special license levy shall be used to create a sinking fund for retirement of the bonds authorized, but provides that such funds shall be used for construction, maintenance, etc.

It is my opinion that whatever is necessary to the accomplishment of construction, maintenance and repair of roads and bridges is a part of such construction, etc. Salaries for the services of those employed in this work are necessary incidents. Compensation for injuries received in the discharge of the work, are likewise a necessary incident, and are thus payable out of any funds appropriated for the purpose of construction, maintenance and repair.

It is my opinion that the State Highway Commissioner and the Governor having exercised the discretion invested in them by the Highway Code and having contracted for compensation insurance, the premium for such insurance becomes a valid charge against the funds of the Highway Department, payable out of such special fund as these officers may designate.

From what I have said above, it can be readily seen that it is my opinion that Section 6 of the Highway Code of 1927 violates no provision of our Constitution.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 23, 1931.

Hon. D. B. Lewis,
Sheriff, Lamar County,
Vernon, Alabama.

Officers—Opinions to by circuit and county solicitors and by the Attorney General.

Opinion by Assistant Attorney General McCall.

Dear Sir:

This acknowledges receipt of your letter of November 7, 1931. You request my opinion:

"Is it the duty of the "county solicitor" to advise the sheriff on legal points of law and advise him in executing legal papers of all kinds?"

In answer will state that sub-section 8, Section 5498, Code of Alabama, 1923, provides in part as follows:

"All county solicitors, all circuit solicitors, and any solicitor of any court of record, shall give every county official opinions in writ-

ing on all matters connected wtih their respective offices except in suits against official's bonds."

The solicitor performs the foregoing duties without any additional compensation.

However the opinion of such solicitor to such official is not protective against suit or prosecution.

Your attention is called to Sections 860, 868, 869, 870, Code of Alabama, 1923.

The Attorney General of Alabama is the Chief Law Officer of the State. By the Constitution of 1901, the office was recreated under its well known common-law designation. It is his duty to represent the State in all criminal prosecutions on appeal to the Court of Appeals and the Supreme Court. On his own initiative also he may institute and prosecute in the name of the State all suits and other proceedings in law or in equity, necessary to protect the interests of the State (Sec. 854), and all litigation concerning the interest of the State is under his direction and control.

An examination of the statutory and constitutional provisions relative to the frame-work of our system of government, and the duties imposed on the various officials, State and local, indicates clearly that in final, only the opinion of the Attorney General, when properly obtained, is protective to the officer obtaining and following it. This is not only because of the statutory law on the subject (so far as strictly county matters are concerned) but also because of the fact that (in matters in which the Attorney General may or must appear) it constitutes the announcement of the position he takes so far as institution of litigation by him is concerned.

This latter phase of the matter (that is, relative to the Attorney General) is mentioned so that you may be fully apprised of the situation. However, the county and circuit solicitors cannot refuse to perform their duties fixed by Section 5498, Code.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 23, 1931.

Hon. G. H. HOWARD,
Judge of Probate,
Wetumpka, Elmore Co., Ala.

Commissioners Court—employing clerk.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of November 13, 1931.

You request my opinion:

"Please advise us if the Commissioners Court of Elmore County can legally employ a clerk and pay for his services out of county funds."

In answer will say that this office has held the Commissioners Court may employ clerical assistance **in regard to roads and bridges** and pay for services of same out of **any** road and bridge funds of the county.—Opinions Attorney General, 1928-30, p. 977. But the Commissioners Court is without authority to employ a clerk or clerks generally and pay for services of same out of any other funds of the county.

Clerical assistance employed in connection with the court's duties with regard to roads and bridges are limited in the performance of their duties to matters connected with roads and bridges.

Section 1347, Code of Alabama, 1923, as re-enacted in Section 157. Act approved August 23, 1927 (General Acts, 1927, p. 391).

As is the duty of the Probate Judge to record the proceedings of the commissioners court, make all necessary orders and issue all process necessary to sustain its jurisdiction, or maintain its authority.—See Section 6763, Code of Alabama, 1923.

Where the probate judge is absent and the court of county commissioners is held without the attendance of the probate judge, a special clerk must be appointed for such term who must be paid by the Judge of Probate,—Section 6744.

The court of county commissioners is a court of record and as such the judge of probate is designated as the one to record its proceedings, etc.—Secs. 6748, 6763, Code.

So, as indicated above, while the court may employ necessary clerical assistance under Section 157, of the Act supra, this does not permit the court to employ a clerk at the expense of the county to perform those duties devolving upon the judge of probate under Section 6763, supra, nor does it permit the court to employ clerical assistance at the expense of the county to perform duties of the judge of probate in the event of a situation such as is mentioned in Section 6762, supra.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 23, 1931.

Hon. John H. Daniel,
Circuit Clerk, Pickens Co.,
Carrolton, Alabama.

Witnesses—Fees of before committing magistrate.

Preliminary Proceedings—before committing magistrate—magistrate issues subpoenas for witnesses.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of November 14, 1931.

You request my opinion:

"1. How much mileage and per diem are State witnesses entitled who are subpoenaed and appear before a committing magistrate?

"2. Is it the duty of the Circuit Clerk and Clerks of the County Court to issue subpoenas to witnesses to appear before a committing magistrate?"

In answer to your first question will state that State witnesses subpoenaed and appearing before a committing magistrate as such, are entitled to fifty cents per day while in attendance on the trial, **to be taxes in the bill of costs** and paid in the manner hereinafter set forth. They receive no mileage.—Section 3771, Code of Alabama, 1923.

Under Section 3755, when a defendant is convicted and sentenced to the penitentiary, or to hard labor, the fees of the State's witnesses before the committing magistrate, **not to exceed ten dollars,** shall be taxed in the bill of costs in the same manner, and paid out of the same fund, at the same time and in the same way, as is provided by law for the payment of other items of costs incurred by the State. See also Section 3667, Code, as amended by Act of 1927.

In answer to your second question will say that neither the Circuit Clerk nor Clerk of the County Court is authorized to issue subpoenas to witnesses to appear before committing magistrates. Only the magistrate does this.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 23, 1931.

Hon. A. M. McConnell,
Judge of Probate,
Athens, Limestone Co., Ala.

Exemptions—Motor vehicles owned by members of commissioners court and used both in transaction of official and private business, not exempt from motor vehicle license tax.

Opinion by Assistant Attorney General McCall.

Dear Sir:

This acknowledges receipt of your letters of November 12, and December 2, 1931.

You state that the members of the Board of Revenue of Limestone County have called upon you to issue to them licenses for their respective motor vehicles free of any payment of the fees and taxes required by law. These cars are not owned by the county. The members make the request on the ground that as they are required to give all of their time to the discharge of their duties as members of said Board of Revenue and do use their cars for that purpose they feel that they should not be required to buy and pay for auto licenses and tags for their private cars so used. In your letter of November 12, 1931 you state these members use their cars in and about "the business for themselves and the county."

You request my opinion:

"Are the members of said Board of Revenue required to pay license tax and other taxes on their motor vehicles just as private individuals?"

In answer will say yes, they are.

The exemptions found in Section 22 Revenue Act 1923 (Acts 1923, p. 291) applies to motor vehicles "owned and used" by counties. The autos of these members are not **owned** by the county nor are they **used** by the county.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 23, 1931.

Hon. E. T. Terry, Chairman,
County Board of Commissioners,
Huntsville, Madison Co., Ala.

Witnesses—Juvenile Court cases under chapter 100, Code of Ala. 1923, and Act approved September 18, 1923 (Acts 1923, p. 296, et seq) amending former Act, no provision for payment of witness fees therein.

Opinion by Assistant Attorney General McCall.

Dear Sir:

This acknowledges your letter of October 31, 1931, answer to which has been delayed because of pressure of work in the office.

You state the Probate Judge (as Judge of the Juvenile Court) has had a number of witnesses subpoenaed in juvenile delinquent cases.

You request my opinion:

"Is there any provision of law for payment of witness fees in cases of juvenile delinquents?"

I presume you refer to cases arising under Chapter 100 (Sections 3528-3566) Code of Alabama, 1923.

In answer will state that no provision is made for witness fees thereunder.

Section 3529 was not intended to cover the matter of witness fees. Section 3558, Code of Alabama, 1923, makes provision for the compensation of certain officers, but your question does not deal with this phase of the matter.

The foregoing opinion deals only with the general law on the subject.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 28, 1931.

Hon. D. W. Crosland,
Judge of Probate, Montgomery County,
Montgomery, Alabama.

Sale of Hunter's Malt Brick—Legal.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of December 8, 1931 in which you state that the certificate of incorporation of a corporation to be known as the "Alabama Malt Brick Company," whose principal object is the sale and distribution of a product commonly designated as Hunter's Milwaukee Malt Brick, has been presented to you.

You ask whether or not the article to be sold is in violation of the prohibition laws of this State.

We have not been presented with a chemical analysis of this product. We have no way of ascertaining its ingredients. However, from the information before me it is my opinion that the article does not come within the purview of Section 4615, Code of Alabama, 1923, which section defines "Prohibited liquors and beverages."

I quote from the case of Marks v. State, 159 Ala. 71:

> "As said before in the opinion when the law names, enumerates, or defines certain articles, compounds, decoctions, beverages or liquors as intoxicants, and prohibits their use, this may be conclusive upon the courts and juries; but when the law uses general terms only, such as 'spirituous,' 'alcoholic,' 'vinous,' or "malt" and intoxicating liquors and beverages, and fails to define these, then it is for the courts and juries to determine what articles are within and what are without the statute."

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

December 30, 1931.

Hon. T. E. Crossley,
Board of Registrats,
Opelika, Lee Co., Ala.

Registration—ten day period in January, 1932, for registration at court house need not be advertised.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of November 9, 1931. You refer to Sections 375, and 392, Code of Alabama, 1923, as amended by the Act approved August 20, 1927 (Acts 1927, p. 274 et seq) and Section 394, Code. You give your version of these various statutes.

You request my opinion:

Must the ten day session of the Board of Registrars in January, 1932, be advertised?

In answer will say no.

The reason for advertisement of the October-December session is because the law does not specify any definite date between October 1st and December 1st on which the Board shall meet. Further, in the October-December session the Board is required to visit each precinct. In the January 1932 session the initial day of meeting is fixed and the Board does not visit each precinct but remains at the court house.

You will observe that Section 377, Code of Alabama 1923 provides:

"377. Places of registration.—No person shall be registered except at the **courthouse or** in the precinct or ward where he or she resides."

Section 375, Code of Alabama, 1923, as amended by the Act of 1927, supra, provides for a registration period in **odd** numbered years, of not exceeding thirty working days in counties of 150,000 or less, and seventy-five working days in counties of over 150,000, between October 1st and December 31st.

Also the section provides a registration period of ten working days in **even** numbered years in all counties beginning with the fourth Monday in January.

Section 376, Code, as amended by said Act provides a registration period of ten working days during January of **odd** numbered years in counties of **150,000 or less.** Also the section provides for registration periods of six working days in each case in counties of **over** 150,000, beginning on the following days:

1. the second Monday in December of even numbered years.
2. the second Monday in February of odd numbered years.
3. the second Monday in April of odd numbered years.
4. the second Monday in June of odd numbered years.
5. the second Monday in August of odd numbered years.

Provided that in counties of 150,000 or less, where meetings are proposed under Section 376, they must be ordered by the Commissioners Court or other like governing body.

Section 392, Code, as amended by said Act, provides the Board shall meet on the first Monday in January of even numbered years, with one week session, for purpose of purging the registration lists.

Section 393, Code, as amended by said Act, provides for **one day's meeting** of the Board on second Monday in February of **even** numbered years to give opportunity to persons to show cause why their names should not be stricken from the registration lists.

Section 394, Code, has no field of operation since the Act, supra, and is now a dead letter.

The foregoing explains all the sections referred to.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 2, 1932.

Hon. W. H. Cantrell,
Judge of Probate, Marion County,
Hamilton, Alabama.

Under facts set out party held liable for store license.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of September 23, 1931, in which you state:

"A restaurant owner runs a cafe and pays State and County license on same. He buys his supplies and keeps them in the restaurant to feed the public. He occasionally sells a loaf of bread and a small amount of meat to people who do not eat in the restaurant. He does not run a grocery store nor keep anything for sale other than above stated.

"Is the above man due to pay a store license?"

In reply thereto I beg to advise that in my opinion this party is liable for the store license. The Act provides for liability for anyone selling goods, wares and merchandise, and according to your statement he is selling such products even though occasionally.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 2, 1932.

Hon. N. P. Tompkins,
Judge of Probate,
Tuscumbia, Colbert County, Alabama.

Person taking out license to operate slot machine cannot remove such machine to another place except in the same city or town where license was originally issued without taking out an additional license under the provisions of Section 363, Acts 1919, p. 282.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of December 23, 1931, in which you state:

"A citizen of this county owning a penny in the slot machine, having taken out license under Schedule 129, desires to occasionally move the machine to another location in the county for operation, and I write to inquire whether or not the license which he has paid will permit him to move and operate the same machine at different places in the same county if he desires to do so."

In reply thereto I beg to advise that Section 363, Acts 1919, p. 282, provides in part as follows:

"* * * and such license shall not be transferable, nor shall it entitle the holder thereof to carry on any other business or do any other act than that named therein, nor at any other location than that therein specified. Provided, that in case it should become necessary to remove any business for which a license is required by this section, from one location to another location in the same city or town, and such business be continued as the same kind and character and by the same person or firm as that carried on at the former location, another license shall not be required for such business for the same license year."

It will be seen from the foregoing that a person can remove his business to another location only in the same city or town. If he removes it to another place in the county, he is liable for an additional license in my opinion.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 2, 1932.

Hon. T. R. Martin,
Judge of Probate, Bullock County,
Union Springs, Alabama.

Construction of subdivision (d) of Section 4½ of Act approved August 22nd, 1923, (Acts 1923, page 157).

Opinion by Assistant Attorney General Evans.

Dear Sir:

I have your letter of December 21st, 1931. You write as follows:

"John Doe makes a mortgage to the bank for one thousand dollars. John Doe's personal property probably would not make a gilt edge security on a note of this size, therefore, the bank also takes an additional mortgage on John Doe's farm for one thousand as additional security to the personal property mortgage. This necessitates the recording of two mortgages of one thousand dollars each but in reality there is only one thousand dollars loaned.

"What procedure should the Probate Office take in collecting mortgage tax on these two mortgages?"

The question asked by you is substantially answered by subdivision (d) of Section 4½ of Act approved August 22nd, 1923 (Acts 1923, page 157). This subdivision reads as follows:

"(d) The privilege taxes required by law to be paid on mortgages * * * shall not be required on or for the filing of any such instrument, providing additional or substituted security for any indebtedness secured by an instrument previously filed, upon the filing of which the taxes provided by law have been paid or which was filed at a time when no such privilege taxes were required by law, provided the secured indebtedness remains unchanged in amount and in time of maturity."

You will notice that for the second mortgage presented for record to escape the tax, the debt secured by the second mortgage must be the same as the debt secured by the first mortgage, and must remain the same in amount and time of maturity. The mortgage filing tax must have been paid on filing the first mortgage, before the second is accepted for filing without payment of the tax. When there is, in the second mortgage, change in the amount of mortgage debt or time of maturity from the amount of mortgage debt or time of maturity in the first mortgage filed, the filing tax must be paid for both.

In my opinion, you may note upon the margin of the record of the mortgage, where no filing tax is required for filing the second mort-

gage, "some indebtedness secured by mortgage, page———, book———." This, in my opinion would sufficiently indicate the reason why no filing tax was collected of the second mortgage filed.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 4, 1932.

Hon. Wm. W. Brandon,
Judge of Probate,
Tuscaloosa, Alabama.

Board of County Commissioners—Appropriations to aid in construction of sewer lines.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of December 2, 1931 in which you state as follows:

"The City of Tuscaloosa is constructing a sanitary sewer line from the Warrior River to the site of the Veterans Hospital. This sewer line passes through portions of Tuscaloosa County not within the corporate limits of the City of Tuscaloosa and a portion of it only is in the city limits. The sewer line is an institution belonging entirely to the City of Tuscaloosa and when completed will be owned, operated and maintained by the City.

"The Board of Revenue is being solicited to make an appropriation of $10,000.00 in aid of constructing this sewer line, the total cost of which is more than $100,000.00.

"The executive officer of the State Board of Health has issued his permit for the construction of this sewer line."

You request my opinion:

"1. Is the Board of Revenue authorized to make appropriations to aid in construction of this sewer line?

"2. If so, to whom will the Board of Revenue be authorized to pay such appropriation as it might make?

"3. What arrangement can or should be made by the Board of Revenue for the use of said sewer line by property owners contiguous thereto?"

I am of the opinion that your first question should be answered in the affirmative. Said appropriation may be made under and by virtue of Section 6755 (19), Code of Alabama, 1923 which provides as follows:

> "6755. Authority of court.—(19) To expend money for the purpose of improving the sanitary conditions of their counties by laying trunk lines of sewers and constructing sewerage disposal plants in localities contiguous to thickly populated communities and to prescribe the terms on which the owners of houses or householders may connect with such lines of sewers; but no such lines of sewers shall be laid without the written approval of the executive officer of the state board of health, such approval to be based on the belief that the laying of any proposed line will materially improve health conditions."

In answer to your second inquiry, I am of the opinion that the appropriation may be paid to whomever the Board deems to be the proper party to best facilitate the carrying out of the project; provided, however, that the money so appropriated be used for the purposes as set out in the above quoted subsection.

In answer to your third inquiry, I am of the opinion that said Board should prescribe the terms on which the owners of houses or house holders may connect with the sewer line, as provided for in the above sub-section.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 4, 1932.

Miss Gussie Jones,
Probate Clerk of Wilcox County,
Camden, Alabama.

All members of the Court of County Commissioners may meet and waive notice of ten days provided by Section 6753 of Code, and fix the amount of bond of Probate Judge of Wilcox County.

Probate Judge cannot legally qualify except by making bond as fixed by the Court of County Commissioners as provided by 1931 Act of the legislature.

Opinion by Assistant Attorney General Evans.

Dear Miss Jones:

Receipt of your letter of December 15th acknowledged. You write as follows:

"Wilcox County Probate Judge recently died. McConico appointed to succeed him. Act approved July 23, 1931 required Court of County Commissioners to fix his bond. Said Act not yet complied with. Have I as chief clerk of late Probate Judge authority to call special meeting of the Commissioners? Is the ten day notice of such meeting mentioned in Code 6753 essential? Can McConico now qualify without action on part of Commissioners' Court by making bond in same amount as former Probate Judge?"

In reply, will say that, in my opinion, it is your duty to call a meeting of the Court of County Commissioners under the provisions of Section 6753 of the Code to fix the amount of the bond to be required of Judge McConico as provided by an Act of the 1931 Legislature. If all the members of the Court of County Commissioners appear and participate in the matter of fixing the amount of the bond for Judge McConico, and the records of the Court of County Commissioners show this fact, this will, in my opinion, show a waiver by each as to the ten days notice and be legal.

In my opinion, it is necessary for the Court of County Commissioners to meet and fix the amount of the bond before Judge McConico can legally qualify.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 4, 1932.

Hon. Minus H. Johnson,
Clerk, Circuit Court,
Jasper, Walker County, Ala.

Time witness has to prove up his attendance as a State witness in a criminal prosecution.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of December 8, 1931, in which you request my opinion as follows:

"How long after a criminal case has been concluded, and the witnesses discharged, does the State witnesses have to prove their attendance and get their claim for same?"

I call your attention to Section 7235, Code of Alabama, 1923, which answers your inquiry fully, and is as follows:

"7235. Attendance; when proven.—The witness must prove his attendance within five days after the adjournment of the session of the court at which he attended."

You will note the above section says, "session of the court" and not term of the court.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 5, 1932.

Hon. I. T. Quinn, Commissioner,
Department of Game and Fisheries,
CAPITOL.

Kelly Act exempting disabled veterans from certain license taxes applies to license on trapper where such trapping is a means of livelihood and the regular business of the licensee.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of November 9th in which you state:

"Please advise whether under H 833, by Kelly of Talladega, passed during the 1931 session of the Legislature disabled veterans are exempted from the payment of trapping licenses prescribed under section 34 of an Act approved September 29, 1923, where the Veteran states that trapping is his business.

"As the trapping season is now on, a prompt ruling by your Department is not only very urgent, but will be much appreciated."

In reply I beg to advise that the Act of the Legislature exempting disabled veterans from license taxes is broad enough to apply to trapper's license, in my judgment. Therefore, if the disabled veteran can make the proof required by law, he can, in my judgment, secure exemption from trapper's license.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 7, 1932.

Hon. Oscar Horton,
Judge of Probate, Marshall County,
Guntersville, Alabama.

World War Veterans who is exempt from payment of poll tax is not relieved of his duty of registering.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I beg to acknowledge receipt of your letter of November 9, 1931, as follows:

"I will appreciate your immediate answer to the following question:

"A World War Veteran registered in 1929 in Marshall County and presented his honorable discharge for Certificate of Exemption at Probate Office on November 2, 1931, would he be qualified to vote in the election November 10th, 1931?

"In other words should he have presented his discharge for certificate of exemption at probate office before last February 1st?"

Your inquiry deals with three matters: The veterans' poll tax exemption amendment, the registration of electors and the requirement of our laws as regards payment of poll tax, generally.

The veterans' poll tax exemption amendment should not be confused in any way with the registration laws. The registration of electors and payment of poll tax are two separate and distinct requirements of citizens who desire to participate in elections. The veterans' poll tax exemption amendment has nothing to do with our registration laws. This amendment does not relieve the exempted veteran of his duty of registering. In your letter you seem to confuse the poll tax exemption amendment with our registration laws. If the veteran in question is exempt from the payment of poll tax and has registered as provided by law, he is entitled to vote. I am assuming that the veteran is entitled to the poll tax exemption.

Under the statement of facts, the veteran was qualified to vote in the November 10, 1931, election. Under your statement of the facts, he was exempt as regards the payment of poll tax, and he had registered in the manner provided by law.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 7, 1932.

Hon. M. H. Hurt, Clerk,
Macon County Board of Revenue,
Tuskegee, Alabama.

Burial of paupers must be made by the county in which they are wards.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of December 22, 1931, in which you state:

"A dependent from this County was placed in the Alabama Intitute for Deaf and Dumb. While there he died and the authorities had his body sent to his people in this County.

"Is it incumbent upon the Board of Revenue of this County to defray the expenses of his burial?"

I do not understand just what you mean when you say the party was dependent. If you mean he was on your pauper list and was being supported by the county, and was sent by the county to the institution referred to above, then in that event, he would have to be buried by the county under Section 2801, Code of Alabama, 1923, which is as follows:

"Burial of the poor.—Upon the decease of any person having no estate, leaving no relative in the county with ability or estate adequate to defray his necessary burial expenses, such expenses are a charge upon the county in which such death shall take place."

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 7, 1932.

Hon. L. A. Whetstone,
Tax Assessor, Jefferson County,
Birmingham, Alabama.

(1) Under provisions of Sections 257, 260 and 269 of Revenue Act of 1919, the Auditor is required to assess, in the manner provided, lands sold to the State for taxes.

(2) Where lands so sold to the State have not been assessed by the Auditor and certificate of purchase has been transferred by the payment of the amount of the certificate plus eight per cent, as

enumerated in Section 260, and no assessment has been made for the subsequent years, then the Tax Assessor is authorized, under the provisions of Section 39, Acts 1923, p. 152, to make an escape assessment on such property for such years.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have letter from your predecessor, the Hon. L. R. Dillon, under date of September 11th and a letter from you requesting an answer to the opinion requested by Mr. Dillon. Mr. Dillon's letter is as follows:

"For my guidance and information and conduct of my office, as Tax Assessor of Jefferson County, I request that you give me your opinion, as attorney General for the State of Alabama, on the following hypothetical question:

"On May 23rd, 1929, a lot was sold in the manner provided by law for 1928 State, County and City taxes and at the said tax sale, the property was purchased by the State of Alabama at and for the sum of $100.00.

"On May 22nd, 1931, said date being the last day of the two year period of redemption. Mr. X purchased the Certificate of Purchase, which was issued to the State Auditor by the Tax Collector, from said State Auditor for the amount paid for the property by the State at the tax sale, namely, $100.00 and interest thereon at the rate of 8% per annum; and upon the payment of said sum to the State Auditor, he assigned the Certificate of Purchase to Mr. X in writing under the authority of Section 260 of the General Acts of Alabama of 1919.

"A few days after this date, the two year period having expired, Mr. X obtained a deed from the Judge of Probate of Jefferson County, Alabama, to the lot in question, as provided by law.

"Mr. X contends that the assignment of the Certificate of Purchase to him by the State Auditor vested in him all right, title and interest, which the State of Alabama had in the property as provided by said Section 260, and that since the land belonged to the State of Alabama, on the 1st of October, 1930, subject only to the right of redemption, that no taxes are due on the same for the years 1929, 1930 and 1931.

"If Mr. X is correct in his contention, it appears to me that the State, County and City will lose taxes on the land in question for the years 1929, 1930 and 1931, which I do not believe was the intention of the lawmaker. I accordingly ask that you advise me whether or not, in your opinion, I can lawfully make an escape as-

sessment against the said lot for the years 1929, 1930 and 1931 in order that the Tax Collector may collect those taxes."

This is a matter which by virtue of the statutes hereinafter quoted is one of considerable doubt. However, for the reason hereinafter assigned, I am of the opinion that you, as Tax Assessor, are authorized to make an escape assessment against the said lot or any other property in like category for the years which it has escaped taxation. It is evident that the State Auditor construed Section 260 of the Acts of 1919, alone, and, therefore, made the assessment without the collection of the proper amount due the State. Section 260 must be read along with Section 257 and Section 269. Construing the three sections together it very clearly appears that when property is sold for taxes until the title vests absolutely in the State, the period of redemption having expired, it is liable for all taxes which accrue. Section 257, Acts 1919, page 282, provides:

"Certificate of Purchase to State; Lands Bid in not thereafter Assessed.—For the real estate bid off for the State in each case the judge of probate shall make out a certificate of purchase to the State, of like import to the one provided for in the preceding section, and deliver the same to the tax collector who shall on final settlement, deliver all certificates received by him from the judge of probate to the State auditor, who shall cause the same to be recorded in a book kept in his office for that purpose, and properly indexed for convenient reference. Lands bid for the State shall not be thereafter assessed, except as hereinafter provided, until the same have been redeemed or sold by the State."

Section 260, under which the assignment of the certificate was made, is as follows:

"Certificate of purchase assignable.—The certificate of purchase delivered by the tax collector to the purchaser at such sale, or to the State, in case the State is the purchaser, is assignable in writing or by endorsement, and if the State is the purchaser such assignment shall be made by the State auditor upon the payment of the amount bid by the State, with interest thereon at the rate of eight per cent per annum, and the assignment thereof vests in the assignee and his legal representatives all the right and title of the original purchaser or of the State, in case the State is the purchaser."

Section 269 provides:

"Assessment of lands bid in by the State and not redeemed or sold.—It shall be the duty of the State auditor to transmit to the tax assessor of each county, by the first day of August of each year, a descriptive list of all the lands in the county reported to him as bid in for the State during the year, and not redeemed, and it shall be the duty of the assessor to present such descriptive list to the

county tax assessor, and it shall be the duty of said county tax assessor, to compare such list carefully with the records of sales of lands for taxes in the county, and of the redemption thereof, and to ascertain if any of such lands have been redeemed, or were not liable for the taxes for which they were sold; if any of such lands are ascertained to have been redeemed, or to have been sold for taxes for which they were not liable, the said county tax assessor shall promptly certify the facts to the State auditor, and the probate judge shall correct the record of land sales in his office accordingly. The county tax assessor shall put a fair valuation on the remainder of the lands contained in such descriptive list; and shall enter such valuation and shall calculate the taxes upon such descriptive list and return the same to the State auditor, who shall thereupon, and annually thereafter until such land is redeemed or recovered, or sold by the State, without further assessments, add the amount of the taxes so assessed on such valuation to the amount for which the lands were sold, and such proceedings shall have the effect of a due assessment of taxes against said lands. The assessors shall furnish to the judge of probate a copy of the list returned to the State auditor, and it shall be the duty of the judge of probate to enter the taxes therein calculated on the record of sale thereof kept in his office."

From the foregoing it will be seen, first, that the tax collected shall deliver all certificates of purchase received by him from the Probate Judge, and the Auditor shall record the same in his office and that thereafter lands bid for the State shall not be assessed except as provided hereinafter. Section 269 provides that before the first day of August the Auditor shall transmit to the Tax Assessor a descriptive list of all the lands in the county reported to him as bid in for the State, and the Tax Assessor shall correct any errors therein, and report such errors to the Probate Judge and Auditor, who shall thereupon correct the record of land sales in their offices. After correcting the list, the Tax Assessor shall put a fair valuation on the remainder of the lands in the list, and shall enter such valuation and calculate the taxes and return the same to the Auditor who shall thereupon annually until the land is redeemed, **add the amount of taxes so assessed on such valuation to the amount for which the lands were sold and such proceedings shall have the effect of a due assessment of taxes against said lands.** It will be seen from these two provisions that the clear intent of the statutes is that no lands shall escape taxation by virtue of the title or certificate of purchase at a tax sale being temporarily in the State. This is clearly emphasized by the provisions of law providing for the redemption of lands sold for taxes.

It is very clear, therefore, by reading Section 260 along with Section 267 and 269 that the Auditor, when he makes such assignment shall do so upon the payment of the amount bid in by the State together with the amount of taxes which have accrued and which are ascertainable and provided for by Section 269. It is very clear to me that Section 269 provides a form of assessment for property so held. The inquiry now arises if the certificate were transferred without the assessment being made by

the Auditor, as provided for by Section 269 of Revenue Act of 1919, and without the collection of the whole amount due as therein provided, can the Tax Assessor assess as an escape such property under the powers given to him.

If the State Auditor actually assessed the property in the manner provided by Section 269, then the purchaser acquires nothing more than a receipt for one year's taxes and he is liable, or the owner of the land is liable for the additional assessment made in such manner by the Auditor.

Admitting, however, that there has been a failure to assess the property on the part of the Auditor and it has in fact escaped assessment, can the tax assessor make an escape assessment of it?

Section 416, Acts 1919, p. 282, provides:

> "Section 416. From and after the first day of October of each year, when property becomes assessable the State shall have a lien upon each and every piece or parcel of property owned by any taxpayer for the payment of all taxes which may be assessed against him and upon each piece and parcel of property real or personal assessed to owner unknown which lien shall continue until such taxes are paid, and the county shall have a like lien thereon for the payment of the taxes which may be assessed by it; and if such property is within the limits of a municipal corporation such municipal corporation shall have a like lien thereon for the payment of the taxes which may be assessed by it. These liens shall be superior to all other liens and shall exist in the order named and each of such liens may be enforced and foreclosed by sale for taxes as provided in this Act, or as other liens upon the property are enforced."

This clearly indicates that the State has a lien for all taxes until the same are paid, and, therefore, if as in the case you present only one year's taxes has been paid, then the State's lien for the remaining years exists unimpaired.

Section 39, Acts 1932, p. 152, provides in part as follows:

> "162. Escape assessments made by assessor; notice to owner; ten per cent penalty; appeal to circuit court by taxpayer.—Whenever the tax assessor shall discover that any property has escaped taxation in any assessment within five years next preceding the current year, he shall list, return and value said property for assessment for the years during which same has escaped taxation, and shall also endorse on such returns the year or years for which the property has escaped taxation, and the accrual of a penalty of ten per cent of the taxes assessed thereon for each year * * *"

This section provides that whenever the tax assessor shall discover that any property has escaped taxation in any assessment within five years he shall list and return same for taxation.

While Section 257 says that property sold to the State shall not be thereafter assessed except in the manner hereinafter provided, which presumably is the manner provided for by Section 269, yet where the provisions of these sections have not been complied with, and the property actually has not been assessed, then I am of the opinion that when the county tax assessor discovers such property, under the provisions of Section 39 of the Revenue Act of 1927, it is his duty to list, return and value said property for taxation for the years during which the same has escaped taxation. It is, therefore, my opinion that you may make an escape assessment against the lot referred to in your letter for the years named.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 7, 1932.

Hon. Henry S. Taylor,
Board of Registrars, Elmore County,
Wetumpka, Alabama.

Registration lists—Time fixed for purging.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of November 24, 1931 in which you request my opinion as follows:

> "Will you please advise me the time set under the law for purging registration lists for the various counties of the State."

I call your attention to an Act approved August 20, 1927, (General Acts, 1927, p. 276). This Act amends Section 392, Code of Alabama, 1923, which fixed the date for purging registration lists on the first Monday in January, 1928, and each two years thereafter. This Section governs, and is as follows:

> "That Section 392 be amended so as to read as follows: 392. (323) TIMES FOR PURGING LIST OF REGISTRATION. The board of Registrars shall meet in each county on the first Monday in January, 1928, and every two years thereafter, for purging the registration list, and may continue in session one week. The names

of those who have died, become non-residents of the State, become insane, and been so declared by inquisition of lunacy, or who have been convicted of any offense mentioned in Section 182 of the constitution, since being registered, or otherwise disqualified as electors under the provision of the constitution, and any names which may have been fraudulently entered on such list, shall be stricken from the registration list."

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 7, 1932.

Hon. J. B. Ewing,
Sheriff, Crenshaw County,
Luverne, Alabama.

Sentences—suspended—prohibition cases—reward not payable until defendant begins working out sentence.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of November 13, 1931. In it you state that at the October 1931 term of the Circuit Court in your county one, Milton Smith, was convicted of the offense of **distilling.** The court suspended his sentence and put him on probation. The Circuit Judge gave you a certificate under Section 4626, Code of Alabama, 1923, that you were entitled to reward of fifty dollars as provided by that Section. The sum was presented to the State Board of Administration. The certificate was returned by said Board with advice that said fee or reward could not be paid until the defendant had actually started serving his sentence.

You request my opinion:

"Am I entitled to immediate payment of said $50.00?"

In answer will say the Board of Administration correctly advised you. You will observe the provisions of Section 4788, Code of Alabama, which reads as follows:

"Payment of fee or reward for furnishing evidence in case of unlawful distilling; from what fund payable.—In all cases provided by statute where a sum of money is allowed in the nature of a fee or reward and is made payable to any person who furnished the evidence that brought about the conviction of the person charged and convicted of the offense of unlawfully distilling or manufacturing

or making prohibited liquors and beverages, said sum shall be payable out of the convict fund on presentation to the state auditor of a certificate from the president of the state board of administration, to the effect that the defendant in whose case said sum is payable, has actually begun to work out the sentence imposed upon him."

Under the foregoing you would not be entitled to the $50.00 until the defendant "has actually begun to work out the sentence imposed." This means in this case not until he has been received by the Board of Administration.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 7, 1932.

Hon. J. W. Rutland,
Tax Assessor, Colbert County,
Tuscumbia, Alabama.

Under Section 36, Acts 1927, page 152, Tax Assessor allowed fee of twenty-five cents for each notice served where assessed valuation of taxpayer's property is increased over valuation fixed for preceding year.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of November 25, 1931, in which you inquire:

"Please advise me if I am entitled to the twenty-five cents citation fee collected by tax collector.

"A citation is issued to taxpayer when Board of Review raises his assessed value.

"Seems to me the Tax Assessor would be entitled to this fee."

In reply I advise that this seems to be settled by Section 36, Acts 1923, page 152. The last paragraph in this Section provides:

"The Tax Assessor shall be allowed twenty-five cents for each notice served as provided in this act, where the assessed valuation of any taxpayer's property is increased over the valuation as fixed for the preceding year, the same to be charged and collected as fees are collected for delinquent assessments."

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 9, 1932.

Hon. B. M. Miller,
Governor,
CAPITOL.

Notaries Public ex-officio Justices of the Peace—appointment of —number.

Opinion by Assistant Attorney General McCall.

Sir:

This acknowledges receipt of letter from Your Excellency dated November 6, 1931. In it the following is stated:

"Application has been made to me to appoint a Notary Public ex-officio Justice of the Peace for the City of Tuscaloosa. The City of Tuscaloosa is in Precinct 16 of Tuscaloosa County.

"The corporate limits of the City of Tuscaloosa are comprehended within Precinct 16 but are not co-extensive with the boundaries of Precinct 16.

"I am advised that the entire City constitutes one voting precinct and that there are no wards in the City. There are two voting places provided for in the City and any legal voter of Precinct 16 can vote at either of the two voting places, and the City is not divided into two wards.

"I have appointed a Notary Public ex-officio Justice of the Peace for Precinct 16."
My opinion is requested.

"Please advise whether or not a Notary Public ex-officio can legally be appointed for the City of Tuscaloosa."

In answer will state that under the law of the State the Governor may appoint **not more than** one Notary Public ex-officio Justice of the Peace **for each precinct** in which the election of Justices of the Peace shall be authorized, unless the legislature by Act provides to the contrary. (Constitution, 1901, Sec. 168).

You will observe that Section 168, Constitution is both a grant of power and a limitation upon the Legislature. Attention is also invited to the fact that in said Section of the Constitution the word "ward" is not used. The word "precinct" is used there in its ordinary manner as evidenced by that part of the Section where reference is made to precincts lying within "or partly within" certain towns and cities. This Section of the Constitution of 1901 differs materially from the corresponding Sec-

tion 26 of Article 6 of the Constitution of 1875 which it superseded. Section 26 of Article 6, Constitution of 1875 reads as follows:

> "Sec. 26. There shall be elected by the qualified electors of each precinct of the counties not exceeding two justices of the peace and one constable. Such justices shall have jurisdiction in all civil cases wherein the amount in controversy does not exceed one hundred dollars, except in cases of libel, slander, assault and battery, and ejectment. In all cases tried before such justices the right of appeal, without prepayment of costs, shall be secured by law; provided, that the governor may appoint one notary public for each election precinct in counties, and one **for each ward in cities** of over five thouhand inhabitants, who, in addition to the powers of notary, shall have and exercise the same jurisdiction as justices of the peace within the precincts and wards for which they are respectively appointed; and provided, that notaries public without jurisdiction may be appointed. The term of office of such justices and notaries public shall be prescribed by law."

You will observe under the provision of Section 26 of Article 6, Constiution, 1875, the Governor was given authority not only to appoint one notary public ex-officio justice of the peace "for each precinct in counties" but that the Governor was also authorized by the Constitutional provision to appoint **one such official** "for **each ward in cities of over five thousand inhabitants.**"

Section 9251, Code of Alabama, 1923, reads as follows:

> "9251. Appointment and term of office.—The governor may appoint one notary public for each election precinct in counties, and one for each ward in cities of over five thousand inhabitants who, in addition to the powers of notary, as defined by law, shall have and exercise the same jurisdiction, and the same powers, as justices of the peace, within the precinct or ward for which he is appointed; and shall hold office for the term of four years from the first Monday after the second Tuesday in January, 1911, and every four years thereafter."

Examination of this Section of the Code shows it was passed prior to the ratification of the Constitution of 1901. It appears codified first as Section 1114, Code of Alabama, 1886. Without material change it has been re-adopted in each succeeding Code since then. At the time of its original adoption (under Constitution of 1875), it was constitutional, in fact followed the identical wording of said Section 26, Constitution of 1875. However, with the ratification of the Constitution of 1901, the provision with regard to such notaries public ex-officio justices of the peace **was changed** in the manner hereinbefore shown.

It is clear that, by the omission of the word "ward" and the reference to cities of over 5,000 population, the framers of the Constitution

being aware of the provision of Section 26, Article 6, Constitution of 1875, evidenced an intent to confine the word "precinct" to its ordinarily accepted meaning.

Section 434, Code of Alabama, 1923, gives to Section 168, Constitution the correct legislative interpretation.

I gather from the communication that the City of Tuscaloosa is operating under the commission form of government, as provided by Section 2335, et seq, Code of Alabama, 1923, and that all divisions into "wards" of such municipality have been discontinued as provided by Section 2348, Code of Alabama, 1923.

However, the boundaries of Precinct 16 were fixed by the County governing body as provided by law. Those boundaries were so fixed as to include the City of Tuscaloosa as a fractional part of that precinct. There can be no justices of the peace or notaries public ex-officio justice of the peace for a sub-division of a precinct (Sections 414, 434 Code; Section 168, Constitution). Tuscaloosa is a fractional part of precinct 16. Under Section 168, Constitution 1901, there may be only one notary public ex-officio justice of the peace appointed for the whole of precinct 16, and hence your question is answered in the negative.

Section 9251, to the extent that it attempts to authorize the Governor to appoint one notary public ex-officio justice of the peace for each **ward** in cities of over five thousand inhabitants is unconstitutional insofar as it might attempt to authorize the appointment of more than one such official for each "precinct."

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 9, 1932.

State Tax Commission,
CAPITOL.

Attention: Mr. John S. Mooring.

1. Federal Land Banks as agencies of the United States are exempt from license tax on automobiles owned and used by it in Alabama and also from gasoline used in such governmental operations.

2. Individuals employed by Federal Land Banks owning their own automobiles are not entitled to such exemption.

Opinion by Assistant Attorney General Moore.

Gentlemen:

I have your letter of September 22, 1931, in which you state:

"We are attaching herto copy of a letter received from Federal Land Bank in New Orleans which is self-explanatory. This letter deals with the question of exemption from the gasoline tax and from the automobile license and ad valorem tax.

"In the first place the question arises whether the Federal Land Bank, in New Orleans, is such a Government instrumentality as to entitle it generally to exemption from state taxes.

"Assuming this to be true, we presume that there will be an exemption of the ad valorem tax on automobiles if owned by the Federal Land Bank but no exemption if privately owned even though used in the business of the Federal Land Bank. We would like for you to advise us if we are correct in this opinion. In the second place, would the Federal Land Bank be such an instrumentality of the United States Government as to exempt it from the automobile tag tax? We cannot assume, even if this exemption is in accordance with the law, that it would extend to privately owned automobiles even though used exclusively in the services of the land bank.

"If the Federal Land Bank is an instrumentality of the United States Government we presume it would, under the decision in the Panhandle Oil Company case, be entitled to purchase gasoline from wholesalers or distributors without the payment of the Alabama Gasoline Tax but would not be entitled to any refund of this tax when paid on purchases from filling stations. We have always held, in similar cases to this, that the stock at a filling station was tax paid, the tax being paid when the gasoline was purchased from the distributors as provided by law. This tax having been legally paid on the transaction in which the party claiming the exemption had no part, we see no reason why any refund should be due, under any circumstances, to subsequent purchasers. Your office has always agreed with this position but we do not find a written opinion and we would be obliged if you would include such an opinion in answering this letter.

"Mr. E. F. Steiner, Acting General Counsel of the Federal Land Bank, requested us to advise him if this matter was referred to you as he desired to file some additional authority from your office. We have notified Mr. Steiner and suppose you will hear from him within the next few days."

You also attach letter of Mr. E. F. Steiner, Acting General Counsel of the Federal Land Bank of New Orleans, relative to the liability of the Federal Land Bank for license tax on automobiles owned and used by it in its business and the excise tax on gasoline.

Answering your first question I advise that the United States Supreme Court in the case of Smith vs. Kansas City Title Company, 255 U. S. page 180, in upholding the constitutionality of the Federal Farm Loan Act said on page 211:

> "Deciding as we do that these institutions have been created by Congress within the exercise of its legitimate authority we think the power to make the securities here involved tax exempt necessarily follows."

In the case of Owensboro National Bank vs. Owensboro, 173 U. S. 664, involving the validity of the franchise tax in Kentucky on national banks the Court declared:

> "That the states are wholly without power to levy any tax directly or indirectly upon national banks, their property, assets or franchises, except so far as the permissive legislation of Congress allowed such taxation, and the court declared that the right granted to tax the real estate of such banks and the shares in the names of the shareholders constituted the extent of the permission given by Congress, and any tax beyond these was declared to be void."

Section 26 of the Federal Farm Loan Act of July 17, 1916, C. 245, 39 Statutes 360, amended January 18, 1918, C. 9, 40 Statutes 431 provides:

> "That every Federal land bank and every national farm loan association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except taxes upon real estate held, purchased or taken by said bank or association under the provisions of section eleven and section thirteen of this Act. First mortgages executed to Federal land banks, or to joint stock land banks, and farm loan bonds issued under the provisions of this Act, shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation."

It therefore appears that the Supreme Court has specifically decided that the Federal Land Banks are agencies of the United States Government and cannot be taxed by the states except as permitted by Congress and Congress has specifically exempted them from all taxation except real estate.

In the case of Federal Land Bank of New Orleans vs. Crosland, Probate Judge, 261 U. S. 375, the Court held that first mortgages executed to Federal Land Banks were instrumentalities of the Government of the United States and as such were exempt from the payment of the registration tax for the recording of such security. This notwithstanding the argument that such registration was optional under the argument advanced by the State of Alabama.

While the use of an automobile on the public roads in Alabama might be argued to be optional, yet if it is necessary to the proper function of the Federal Land Bank this position could hardly be sustained any more than the argument that the registration of mortgages was optional. Therefore, in my opinion, if the automobile is owned by the Federal Land Bank and used in and about its business, it is exempt from the license tax and likewise from the ad valorem tax on same.

If, however, such automobiles are owned by individuals employed by the Federal Land Bank such exemptions do not apply.

Your next inquiry is whether the Federal Land Bank would be entitled to purchase gasoline from wholesalers or distributors without the payment of the Alabama gasoline tax. This proposition is settled affirmatively by the case of Panhandle Oil Co. vs. Knox, 277 U. S. 218, in my opinion.

In your last question you state:

> "The Federal Land Bank would be entitled to purchase gasoline from wholesalers without the payment of Alabama gasoline tax but would not be entitled to any refund of this tax when paid on purchases from filling stations. We have always held that the stock at a filling station was tax paid, the tax being paid when the gasoline was purchased from the distributors as provided by law. This tax having been legally paid in the transaction in which the party claiming the exemption had no part, we see no reason why any refund should be due under any circumstances, to subsequent purchasers."

This is a question largely of administrative procedure. Agencies of the United States Government under the ruling in the Panhandle Oil case cannot be required to pay the tax but a reasonable regulation such as you have made appears to me to be not only legal, but salutary.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 11, 1932.

Hon. McK. Lovett,
Tax Collector, Winston County,
Double Springs, Alabama.

Poll Tax—Commission of Tax Collector.

Code—Section 3035, Section 3036, construed.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of December 5, 1931. You state John Doe paid back poll taxes for four years in the amount of $6.00.

You request my opinion:

"For certifying this to the probate judge is my compensation only 2½ cents or would I be entitled to 2½ cents for each year for which he paid?"

In answer will say your identical question has been ruled upon in Biennial Report Attorney General, 1926-1928, pages 462 and 463 where this office held the tax collector would be entitled to only 2½ cents, and not 10 cents.

Section 3035 requires the tax collector to prepare a list of names of those who have paid poll taxes, the list to be prepared in the manner therein stated and furnished to the probate judge.

Section 3036 provides a compensation of 2½ cents "for each name so entered." This has been interpreted to be without regard to the number of years for which the tax may have been paid.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 9, 1932.

The State Tax Commission,
CAPITOL.

1. Where contractor from another state not doing business in Alabama performs a contract on a Federal Reservation, he is not liable for Alabama license.

2. State cannot require license of Alabama contractors for work performed entirely within another state.

Opinion by Assistant Attorney General Moore.

Gentlemen:

Under date of June 8, 1931, you requested an opinion on the following questions:

"1. Would a contractor residing and doing business in Alabama be liable for a license under the aforementioned schedule for accept-

ing a contract to be carried out on a Federal reservation or Federal property, located in this State, as, for instance, a hangar or hospital at Maxwell Field, or a post office building in Montgomery?

"2. Would a contractor who has no principal office or place of business in this State but who operates from his office in Atlanta, Georgia, be liable for license as contractor as above, for accepting a contract from the United States Government which was to be carried out on a Federal reservation or property in this State, as for instance, a hangar, or hospital at Maxwell Field, or a post office building in Montgomery?

"3. Would a contractor residing and doing business in Alabama be liable for license as above for a contract to be performed in some other State; and, if so, would the fact that the contract was to be performed on a U. S. Reservation or property in such other State affect liability for such license in Alabama?

In reply I beg to advise that question one was answered in the affirmative by this office in an opinion rendered to Hon. John S. Mooring, under date of October 7, 1931.

I think that clearly there can be no liability under the question numbered two. The contractor is not doing business in this State in any event except on a Government Reservation where the State has no jurisdiction.

The answer to question three is the same as that to question two. The liability for license is for doing business in this State, and if the contract is done or performed in another State whether on a Government Reservation or not, it is not doing business in this State and hence there is no liability for license.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 9, 1932.

Hon. O. L. Haynes, Secretary,
Alabama Real Estate Commission,
CAPITOL.

Party denied license to operate as a real estate broker by the Alabama Real Estate Commission and who appeals from such ruling of the Commission cannot legally operate as a real estate broker pending the outcome of such appeal.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of December 21, 1931, in which you state:

"Under Section 9 of the Alabama Real Estate License Law the subject was given a hearing and broker's license was denied on the grounds that the subject had proven itself untrustworthy and incompetent to act as a broker or salesman in a manner to safeguard the public's interest. An appeal was taken from the decision of the Alabama Real Estate Commission to the Circuit Court of Jefferson County.

"You will note from a copy of a letter addressed to the department the question is raised as to whether or not the subject may continue to operate as a real estate broker pending the outcome of the appeal before the Circuit Court.

"We should like to have your opinion on this question and we trust you will render same as soon as possible."

In reply to your inquiry it is my opinion that such a party cannot continue to act as a real estate broker or salesman pending his appeal. He cannot act legally until he is licensed. Your Commission having denied him a license he continues in that status until upon appeal the ruling of your Commission is reversed. So long, however, as the decision of your Commission is not reversed or set aside by a superior court, the party is without authority to act.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 9, 1932.

Hon. G. O. Wallace,
Judge of Probate,
Clayton, Barbour County, Alabama.

Motor vehicles of other states used for hire in Alabama liable for Alabama license.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of November 28th, 1931, in which you state:

"Into this county there come from Georgia or Florida motor trucks bearing a tag of one of those states, and bringing cargoes from

one of those states for delivery in this State. The operators of such trucks live in a state other than Alabama, and on their return home doubtless take cargo picked up in this State for delivery in the State of their residence, if any such business offers. All such business being done for a reward, operators go and come between the states.

"I desire advice whether operators of trucks under conditions above described are liable to motor vehicle license (truck tags) for the State of Alabama.

"This office some time ago received a circular of instruction on this subject from the State Tax Commission, but I have been informed that there was some legislation on the subject at the last session. I have the Acts of that session only in loose leaf, unbound form, to look through which involves quite a deal of labor, and requires more time than a Probate Judge usually has at his disposal, especially to find only one Act. Therefore, I apply to you as above. If my request would more appropriately have gone to the State Tax Commission, please refer this letter to them for an answer."

In reply I beg to advise that if the trucks are used for hire they are liable for Alabama license.

The only exemption to non-resident owners is for motor vehicles not used for hire and under the recent Act for occasional use in hauling furniture for home owners. Under the facts set out by you neither of these exemptions apply, and therefore there is liability for the Alabama truck license.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 9, 1932.

Hon. Wade Wright, Solicitor,
Eighth Judicial Circuit,
Decatur, Alabama.

Dealer tags or demonstration tags can be used only on cars used for demonstration purposes.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of December 1st, 1931, in which you ask the following questions:

"I have just received from a Motor Company, which has an automobile agency and which also does an extensive garage business in connection therewith, the following inquiry:

"'1. Very frequently we have good customers come into our shop for repair work to their cars. In some cases, their work makes it necessary that they have a car to use while their own car is being worked on. Their place of business may be several miles from our garage or they may have important business to attend to while their car is being fixed. It has been our practice to let these parties, and this is done only in rare cases and not to every person who has work done in the shop, whom we felt must have transportation during this period, have one of our used cars. Of course, the car they used in every case was a used car, which was for resale, and on which we put dealer's tag. Sometimes this car would be used only for a few hours, while in other cases it might be two or three days before the work was finished and they got their car back. Common sense seems to tell us that the logical thing to do is use the dealer's tag in this instance. It certainly would be a violation of the law for the man to use his own tag and certainly neither the man nor ourselves can afford to buy a private tag for this use.

"'2. As a rule our salesmen use new cars as demonstrators. However, right now they are all using used cars for this purpose.

"'All of these cars are of course for resale at all times. During the day, these men are working all the time in the pursuit of their business, which of course is to sell that particular car or some other one. At night, we would like to let them drive this car home. In some cases, the salesman contracts with a prospect and tries to make a sale after supper with that car. We would like to know if this use of the dealers tag is permissible; that is to use this tag on the car when the salesman takes it home at night?

"'3. When we have no cars as demonstrators, two of our salesmen buy their own cars. These cars are used primarily for use during the day to further the sale of our products. Of coure a dealer's tag during that time is perfectly permissible. At night they, of course, take their car on home and use it as they see fit. Sometimes they also make a demonstration with this car at night. Will it be necessary for this man to buy a private tag to use on this car at night or can he use a dealer's tag?"

My answer to your first question is in the negative. Demonstration tags can be used only on cars used for demonstration purposes and not on private cars. Neither can a motor car company lend a car to a person and use a demonstration tag thereon. This question should largely be obviated by the recent Act which provides that the license tag follow the car.

The answer to your second question is practically the same. Demonstration tags are allowed to be used only on cars used for demonstration purposes and if a salesman uses the same for his private purposes, he is using same without authority of law.

The answer to your third question is likewise in the negative. These are cars owned by the salesman in their private capacity. There is no authority for them to use demonstration tags on such cars.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 11, 1932.

Hon. E. D. Green, President,
County Board of Revenue,
Livingston, Sumter County, Alabama.

Counties—Payment of salary to county employe during illness.

Opinion by Assistant Attorney General McCall.

Dear Sir:

This acknowledges receipt of yours of November 10, 1931, answer to which has been delayed because of pressure of work in the office.

You state that the County Board of Revenue employed one, J. T. Watt, to engage in certain work on the public roads of the county at a salary of $75.00 per month for his services. In the early part of September, 1931, while so engaged in his work on the public roads of the county he was injured by a dump truck of the county and has been in the hospital at Electric Mills, Miss., ever since, due to the injuries received. He has asked the county to pay his hospital expenses amounting to about $350.00. He has been paid his August salary and also his salary for months prior to August, as well as for the days he worked in September up to the time he was injured.

You request my opinion:

"May the county legally pay Mr. Watt the amount of his salary for each month he has been in the hospital?"

In answer will state there is no legal obligation to the county continuing to pay the monthly salary to a county employe during the time such employe is absent from his duties due to injuries incurred in line of duty. This is a matter within the discretion of the officer or board of

the county employing such person. There is no provision for paying his hospital expenses and medical bills.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 11, 1932.

Hon. H. W. Owens,
Judge of Probate,
Abbeville, Henry County, Alabama.

Counties—Advance payment for services and materials.

Opinion by Assistant Attorney General McCall.

Dear Sir:

This acknowledges receipt of your letter of November 5, 1931.

You request my opinion:

"1. Can a claim for material to be furnished a county be paid for in advance of or before the same has been furnished the county?

"2. Can a claim for services to be rendered a County be paid for in advance of or before the completion of the rendtion of such service to the county or its officers or employees?

"3. Is a claim a legal charge against county funds payable in advance of the furnishing of the article or rendition of the service thereof to the county or its officers or employees, regardless of the nature of such article or service, providing the same be a legal charge after the article and/or service has been furnished and/or rendered?"

In answer to all three of your questions will say no.

The whole frame-work of county government is built around the principle that a claim is not due until services have been rendered, material furnished or the work completed. An examination of the sections of the Code dealing with the itemization, audit, and allowance of claims indicates clearly this to be the correct view. No court decisions are available on the specific point to guide us.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 11, 1932.

Hon. J. H. Hard, Jr.,
Chief Examiner of Accounts,
CAPITOL.

State pays for removal of a prisoner from another State who without requisition is returned by the Sheriff to this State for trial, only when the defendant is charged with and convicted of a felony.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

Copy of a letter of December 18, 1931, which you wrote to Hon. J. C. Canant, Sheriff of Butler County, is acknowledged. In this letter you state:

"The bill of $16.84 for the removal of Albert Christian from Pensacola, Florida, to the jail in Butler County is herewith returned to you without approval for payment.

"It appears that, as a criminal being in another State, he consented to return to Alabama without requisition from the Governor.

"The Convict Department informs that Albert Christian is serving a sentence at Hard Labor for Butler County, being convicted of a misdemeanor charge, **Cruelty to Animals**, and being given a Hard Labor Sentence of 20 days to pay a fine, 89 days to pay the costs, and a sentence of 90 days as additional punishment."

You request my opinion:

"Is the State liable for this removal bill?"

It is my opinion that the State is without authority to pay this claim. It could only be paid under the authority of Section 3742, and this Section provides that payment for the return of a prisoner under the circumstances you state, is not paid by the State unless the defendant is charged with and convicted of a felony. This Section is as follows:

"Criminal returning to State without requisition; fees of sheriff. —In cases where any sheriff in this state receives notice from the authorities in another state that a party or parties is or are arrested for crime committed in this state, and the sheriff of the county in which said crime was committed goes to the state aforesaid and the party or parties aforesaid consents to return with said sheriff without requisition from the governor, said sheriff shall be entitled to the fees and expenses now provided by law where requisitions issue. But

this section shall apply only to felonies and only where conviction of the party or parties is had."

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 11, 1932.

Hon. W. E. Merrell,
President of the Board of Revenue,
Columbiana, Shelby County, Alabama.

Boards of Revenue or Commissioners Courts may, at their discretion, make appropriations for carrying on Farm Demonstration Agent work or Health Unit Child Welfare Work.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of December 16, 1931, in whcih you request my opinion as follows:

(1) Is it compulsory that the county make appropriations for the maintenance of Health Unit Child Welfare Department?

(2) Is it compulsory that the county make appropriations for carrying on Farm Demonstration Agent work?

It is my opinion that it is not. The law only makes it permissible for the counties to make these appropriations, but it is in nowise compulsory. It is left to the various counties and the authorities of the counties to determine whether or not it will make provisions for such work. When either one of the above agents is established in a county, the county may, by proper orders of its Commissioners Courts or Boards of Revenue, discontinue the same altogether at any time.

The authority for making appropriations to the work of Farm Demonstration Agent is found under Section 6755, Code of Alabama, 1923, subdivision 18. This section delegates the authority and power to the Commissioners Courts or Boards of Revenue. Section 18, supra, is as follows:

"18. Where the state or federal authorities have taken up the work of farm demonstration, or the organization of farm life clubs for the promotion of agriculture, to appropriate for aiding in such work such sum or sums as the county commissioners or board of revenue may deem adequate and necessary."

I am enclosing you copy of an opinion of this office rendered October 5, 1931, to Hon. G. N. Downer, County Commissioner, Pickens County, Alabama, which will also aid you in this matter.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 11, 1932.

Hon. A. L. Hasty,
Judge of Probate,
Linden, Marengo County, Alabama.

Clerk of Jury Commission—When entitled to pay.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of December 26, 1931, in which you request my opinion as follows:

> "Enclosed herewith find an account and some memorandums of our late clerk of the Jury Commission. The question that I want to know of you is: Is it right for me to give the clerk of the Jury Commission a check for the work he did after the old jury commissioner's time expired?"

It is my opinion if the clerk was ordered by the Jury Commission to prepare the list and he obeyed its order and worked up until he was relieved by the new Commission, he should have pay for the time he worked, as provided by Section 8587, Code of Alabama, 1923, which is as follows:

> "8587. When clerk of court clerk of commission; compensation of. —In counties having seventy-five thousand or less population by the last federal census preceding the employment, the clerk of the circuit court may be employed as the clerk of the commission, and in such counties the clerk of the commission, whether he be the clerk of the court or not, shall be paid for his services rendered under the direction of the commission, the sum of five dollars per day while actually engaged in performing his duties, to be paid out of the county treasury upon the order of the president of the commission."

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 11, 1932.

Hon. E. J. Garrison,
Judge of Probate, Clay County,
Ashland, Alabama.

Powers of Courts of County Commissioners or Boards of Revenue as to claims presented by sheriff for payment.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of November 23, 1931, in which you request my opinion:

> "I write to ask your opinion relative to payment of electric light bills charged against the county for lighting the residence of the jailer, who resides with his family in a house separate from the jail, though the jailer sleeps in the jail. The sheriff has the jailer to feed the prisoners and the food is cooked at the jailer's home. The county furnishes a range and wood for the same for preparing the meals for the prisoners.
>
> "It is my understanding that the sheriff claims that the county should pay for the electric lights for the jailer's house, claiming that it is necessary or needed for lighting the cooking room while food is being prepared for the prisoner. However, it appears that the electric lights are furnished for the jailer's residence in addition to the above.
>
> "I write also to ask is it proper for the jailer to use the range and fuel for same, which is furnished by the county, for preparing the meals for his own family?"

I am unable to find any authority for the Court of County Commissioners to allow a claim for lighting the jailer's home, nor is it proper for him to use the stove and wood furnished by the county for preparing meals for prisoners confined in the county jail, for cooking for his own family.

We get the authority for furnishing him a stove and fuel for preparing meals for prisoners confined in his jail by a liberal construction of Section 4878, Code of Alabama 1923; but in my opinion it could never be construed to permit the use of county property for individual purposes. These can only be used for preparing food for prisoners, and if a claim should be allowed which entails any unwarranted use it should be disallowed, and if allowed by the Court of County Commissioners, it should be charged back to it.

The powers of the Courts of County Commissioners and Boards of Revenue are limited. They are purely creatures of the statutes and not

of the Constitution. They derive all their powers and authority from statutory enactment.—117 Ala. 203; 70 Ala. 145.

Therefore, before such courts can do any act or perform any service, they must be able to point to some statute authorizing such action.

Opinions Attorney General, 1926-28, pp. 127, 492.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 12, 1932.

Hon. B. M. Killingsworth,
Chairman, Board of Registrars,
Montevallo, Alabama.

In order to become a qualified voter a person who has left the State of Alabama and established his residence elsewhere returning to Alabama, would have to comply with all the requirements of Section 178 of our Constitution.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of December 10, 1931, in which you request my opinion as follows:

"If a person moves out of the State and lives for a few years and never registers in the State to which he moves, his name having been stricken from the voting list in this State, he then moves back to Alabama, does he have to re-register in this State before he can vote?"

It is my opinion that a person who lives in Alabama, and for several years, being otherwise qualified, votes in this State, moves his residence to another state and becomes a citizen of that state, he becomes, so far as Alabama is concerned, an alien and should he come back to the State and reestablish his citizenship here, he will have to comply with the law in the same way he would had he never been a citizen of the State of Alabama. In other words, he would have to register, pay all poll tax due by him before he left and since he has returned to the State, and live here two years before he could vote. It is my opinion, he would have to comply with Section 178 of the Constitution of 1901, which is as follows:

"178. To entitle a person to vote at any election by the people, he shall have resided in the state at least two years, in the county

one year, and in the precinct or ward three months, immediately preceding the election at which he offers to vote, and he shall have been duly registered as an elector, and shall have paid on or before the first day of February next preceding the date of the election at which he offers to vote, all poll taxes due from him for the year nineteen hundred and one, and for each subsequent year; provided, that any elector who, within three months next preceding the date of the election at which he offers to vote, has removed from one precinct or ward to another precinct or ward in the same county, incorporated town, or city, shall have the right to vote in the precinct or ward from which he has so removed, if he would have been entitled to vote in such precinct or ward but for such removal."

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 12, 1932.

Hon. E. W. Pettus,
Selma, Alabama.

Confederate Veterans, sailors and widows of Confederate Veterans do not lose their right to draw pensions under the laws of the State of Alabama by being merely temporarily absent from the State.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of December 21, 1931, enclosing a letter from Hon. Walter K. McAdory, State Pension Clerk, relative to the pension of Mrs. Alexina F. Hooker. In this letter you state:

"Mrs. Hooker lost her mind some time ago, and is in very bad mental condition, and is in a hospital over in Georgia,—a private institution, at which she receives very good treatment. Her board and expenses at this institution are being paid by her daughters and sons-in-law, and the pension which she gets from Alabama is very necessary for her comfort while she is undergoing treatment at this Georgia place.

"Mrs. Hooker could not get into an Alabama public insane hospital for the reason that they are full, and her going to Georgia relieves the State of Alabama of the trouble and expense of taking care of her at one of our public institutions. In fact, the family preferred to have her in a private place rather than in a public institution, and the Georgia place, they think, is the best place in the South for her."

On the above statement of facts you request my opinion.

"Was Mrs. Hooker properly stricken from the pension roll of the State of Alabama?"

It is my opinion that Mrs. Alexina F. Hooker's name should be re-instated on the pension roll of the State of Alabama. The fact that she is temporarily absent from the State being treated for her malady in the State of Georgia does not disqualify her from drawing the pension she would otherwise be entitled to. I do not think that the Legislature in the passage of Section 2961, Code of Alabama, 1923, had in contemplation that should any soldier, sailor or widow of a Confederate Soldier who is entitled to draw a pension under the provisions of Chapter 55, Code of Alabama, 1923, merely temporarily going into another state for treatment at a hospital, forfeit his or her right to remain on the pension roll of this State. Therefore, it is my opinion that Mrs. Hooker should be re-instated and permitted to draw her Confederate pension under the laws of this State. To hold otherwise would place upon these old Veterans and their widows the burden of having to remain at home and suffer when by going to another state they might find relief. Therefore as stated above I do not believe that the Legislature in the passage of our Confederate pension laws intended that a pensioner should be cut off by strict technical rulings such as we have in this case.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 12, 1932.

Hon. Sam T. Huey,
Deputy Probate Judge,
Bessemer, Jefferson County, Alabama.

Costs and Fees—Fee allowed Probate Judge for services in legitimizing and adopting children.

Adoption of children—Fees of Probate Judge and Sheriff.

Section 9302, Code—Construed with amendatory Act No. 405-S-574-Scruggs, approved July 17, 1931.

Opinion by Assistant Attorney General McCall.

Dear Sir:

This acknowledges receipt of your letter of October 24, 1931.

You refer to Act No. 405, Senate Bill 574, Scruggs, approved July 17, 1931, amending Section 9302, Code of Alabama, 1923, relative to the adoption of children.

You request my opinion.

"Will we be permitted to charge for the different citations issued and made or will we be limited to the one dollar set out in the Code as costs and fees for the adoption of a child?

"If the Probate Judge is limited to the one dollar what costs, if any, would we collect for the sheriff where notices or citations are served by him?"

Pretermitting a consideration of the constitutionality of the amendatory Act of 1931, will state, in answer to your first question, Section 9302, as amended by said Act, is silent on the question of fees. The Section as it appears in the Code of 1923 provides, "For services under this chapter, the Judge of Probate is entitled to a fee of one dollar." The amended section does not take any duty away from the Judge of Probate previously imposed upon him. If there were no other Code section on the matter, it is doubtful if the elimination of the fee in Section 9302 could apply to those in office at the time of the amendment. However, it is not necessary to deal further with this feature, since by Section 7285, Code of Alabama, 1923, the fee of the Probate Judge for services under Chapter 326, Code, is fixed at $1.00. This has not been changed. This is all that the Probate Judge is entitled to receive for services under Section 9302 as amended by the Act of 1931.

In answer to your second question in my opinion the Sheriff's compensation is provided for under Section 7287, "* * * for all other public services not otherwise provided for, such sums as may be just, to be allowed by the county commissioners court, upon presentation of a verified account, showing the items of service rendered, to be paid out of the county treasury not exceeding six hundred dollars per annum; but any sheriff whose annual income from fees of office exceeds five thousand dollars net, after all expenses have been paid by him, shall not have any ex-officio allowance, to be paid quarterly."

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 12, 1932.

Hon. Harry Scale,
City Attorney,
Mobile, Alabama.

Vino-Sano Wine Bricks.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of recent date in which you request an opinion of this office as to whether or not the possession and/or sale of an article known as Vino-Sano Grape Bricks is legal in Alabama.

We have not been presented with a chemical analysis of this product. We have no way of ascertaining its ingredients. However from the information before me it is my opinion that the article does not come within the purview of Section 4615, Code of Alabama, 1923, which Section defines "Prohibited liquors and beverages."

I quote from the case of Marks vs. State, 159 Ala. 71:

> "As said before in the opinion when the law names, enumerates, or defines certain articles, compounds, decoctions, beverages or liquors as intoxicants, and prohibits their use, this may be conclusive upon the courts and juries; but when the law uses general terms only, such as 'spirituous', 'alcoholic', 'vinous', or malt and intoxicating liquors and beverages, and fails to define these, then it is for the courts and juries to determine what articles are within and what are without the statute."

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 12, 1932.

Dr. Glenn Andrews,
State Prison Inspector,
CAPITOL.

Federal Prisoners—State without authority to enter into contract with Federal Government as to feeding of same.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of August 5, 1931, in which you inquire about the feeding of Federal prisoners confined in the various jails of the State under Section 4819, Code of Alabama, 1923, which section is quoted later on in this opinion. I take from your letter that the question which you desire passed upon is:

> "Can the State through its constituted authorities contract with the Federal Government for the feeding of Federal prisoners in accordance with the State laws now in existence?"

I have examined the State and Federal statutes and authorities and I am unable to find any statute, either State or Federal, which would give the State the authority to contract with the Federal Government relative to feeding Federal prisoners. It is my opinion before this could be done that there would have to be some direct authority authorizing such contract. Section 4819, Code of Alabama, 1923, provides that the sheriff or jailer of any county or jail within the State, must receive Federal prisoners for safekeeping, etc., and is as follows:

> "4819. United States prisoners.—The sheriff or jailer must, if the jail of the county is sufficient, receive into his custody any person committed under any criminal charge or offense against the United States, and safely keep such prisoner, according to the order or process of commitment, until duly discharged by law; and he is liable to the same penalties for the escape of such prisoner as for the escape of a prisoner committed under the authority of this state."

You will note the only duty the above statute imposes on the sheriff or jailer is to receive such prisoners, and to detain them until discharged by law. Nothing is said about the feeding of such prisoners. Therefore, it naturally follows that it is up to the sheriff and the Federal Government to make such arrangement as to such item as may be adequate to take care of this expense. It is my opinion that, before such a contract as you mention is entered into, there would have to be some enabling statute authorizing the State to enter into such an arrangement, and, as stated above, I am unable to find such a law or the construction of any law that would authorize it.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 12, 1932.

Hon. Landon G. Smith,
Highway Director,
CAPITOL.

H. B. 52. Violations of Highway Code of 1927.

Opinion of Assistant Attorney General Lawson.

Dear Sir:

I have your letter of recent date which is as follows:

> "The Highway Department is working on a plan to police some of our main arterial roads with the view of enforcing the traffic laws as provided for in the Highway Code and House Bills 52 and 53, copies of the latter being attached.

"Considerable doubt exists in my mind as to the interpretation of both of these laws because I note that there are several exceptions to the law, especially in House Bill 52.

"I would thank you to let me have your opinion as to who comes within the terms of the law and who does not so that I may give my field men accurate instructions as to their specific duties."

I am informed that the field men to whom you referred were appointed under Section 6½ of the Highway Code of 1927, and hence are subject to the following provision, "Provided, however, that said officers and deputies shall have no authority to prefer charges or make arrests for the violation of other than that of the road laws of the State of Alabama."

The road laws of Alabama are found in Article II of the Highway Code of 1927, page 16, Section 47 et seq. (Acts 1927, page 363, Article II, Section 1397 (49)—1397 (109). The laws therein set out are too numerous to be set out here and the provisions therein embodied are the laws on this subject unless changed by H. B. 52, Governor's No. 146, of the 1931 Legislature. Section 1 of House Bill 52, referred to above greatly changes Section 80 of the Highway Code of 1927, page 31 in several particulars which I will attempt to set out below.

(1) The width of vehicles operating on the highways is limited to eight feet or ninety-six inches by the recent act while under Section 80 of the Highway Code of 1927, supra, the maximum width was nine feet or 108 inches.

(3) The length, including load, or any frames or body designed for holding load is restricted to 33 feet or 396 inches, and no combination of vehicles coupled together shall have a total length, including load, in excess of 46 feet or 552 inches. This provision changes Section 80, Highway Code of Alabama, supra, in this particular, that the length of a combination of vehicles is reduced from 85 feet to 46 feet.

(2) H. B. 52, supra, reduces the maximum height from 14 feet 6 inches, or 192 inches, as provided in Section 80 of the Highway Code, supra, to 12 feet or 144 inches.

However, the following vehicles are exempted from the operation of the above provisions.

(a) Farm Tractors.

(b) Motor vehicles temporarily transporting implements or machinery of husbandry, road building or maintenance.

(c) Vehicles used in the movement of material and supplies to be devoted to existing construction or repair projects.

(d) Equipment operated by cities or towns for municipal purposes.

(e) Motor vehicles used in the construction, repair, and/or maintenance of electric light, telephone, telegraph or power line or property operated by a municipality or by a public transportation or utility company under the jurisdiction of the Alabama Public Service Commission of Alabama.

(f) Nor shall such restrictions as to length apply to motor vehicles transporting poles, logs, lumber and timbers.

The State Highway Department can in a case of necessity or emergency give written permission for a vehicle to exceed these restrictions.

(4) The maximum weight of vehicles allowed on the highway is also changed by H. B. 52, supra. The limitations as to weight are as follows: "No motor vehicle having an axle weighing unladen or with load in excess of 12,000 pounds, and no motor vehicle or combination of vehicles having a gross weight of more than 32,000 pounds shall operate on the highways of this state without special written permission.

The weight limit under Section 80 of the Highway Code of 1927, supra, was 16,000 pounds per axle with no maximum as to the gross load, a vehicle being entitled to weight of 16,000 pounds for each axle. Under the recent act the gross weight is limited to 32,000 pounds regardless of the number of axles.

An axle load is considered as the total load on all wheels spaced longitudinally so that their centers may be included between two vertical parallel planes forty (40) inches apart.

In determining the axle weight of a vehicle and load under the recent bill the gross weight of vehicle and load shall be divided by the number of axles on the vehicle or combination of vehicles.

Those vehicles excepted from the operation of the restrictions as to height, length and width are not excepted from the restrictions as to weight.

Section 82 of the Highway Code, supra, is as follows:

> "Any peace officer having reason to believe that the weight of vehicle and load is unlawful is authorized to weigh the same either by means of a portable or stationary scales, and may require that such vehicle be driven to the nearest scales in the event such scales are within two miles. The officers may then require the driver to unload immediately such portion of the load as may be necessary to decrease the gross weight of such vehicle to the maximum thereof as specified in this article."

The maximum is now governed by H. B. 52.

Section 2 of the recent act, supra, makes it unlawful for any vehicle or combintaion of vehicles, except fire fighting equipment and passenger busses or vehicles, whose total length equals or exceeds 36 feet, or whose gross weight, including load, exceeds 10,000 pounds per axle, shall operate on the public highways of the Stae at a speed in excess of 35 miles an hour. Section 3 of the act makes it mandatory upon vehicles in excess of the above limitations to carry a mechanical device which automatically prevents the operation of the vehicle at a speed in excess of 35 miles an hour.

Section 4 of the Act deals with trailers and provides that no trailer shall be operated over the highways of this state unless such trailer is firmly attached to the rear of the motor vehicle drawing it, provided that in no case shall more than one trailer and one semi-trailer be drawn by a motor vehicle or truck tractor, the total length of the motor train in no event to exceed forty-six (46) feet. This section shall not apply to the transportation of logs, poles, lumber and timbers so far as relates to the length thereof, or to the vehicle transporting the same.

A trailer is defined as, "Every vehicle without motive power designed for carrying property wholly on its own structure and for being drawn by a motor vehicle."

A semi-trailer is defined as, "Every vehicle of the trailer type so designed and used in conjunction with a motor vehicle that some part of its own weight and that of its own load rests upon or is carried by motor vehicle."

A "Highway" as defined in the Highway Code of 1927, is, "Every place of whatever nature open to the use of the public, as a matter of right, for the purposes of vehicular travel. The term 'highway' shall not be deemed to include a roadway or driveway upon grounds owned by private persons, colleges, universities or other institutions."

I also wish to call your attention to Section 77 of the Highway Code of 1927, page 77, and Section 83, page 33.

Section 81 of the Highway Code, supra, is as follows:

"It shall be unlawful and constitute a misdemeanor for any person to drive or operate any vehicle upon the roads, or highways, of this State, unless the tag license attached to the vehicle is of the proper classification computed upon the basis of the load carried upon the vehicle as provided by law, and any person violating this provision, shall be guilty of a misdemeanor and upon conviction shall be fined not less than twenty-five dollars, nor more than one hundred dollars, or may be imprisoned in the county jail for not less than five days, nor more than thirty days, or by both fine and imprisonment."

I wish to call to your attention certain provisions relative to the enforcement of these provisions.

Sections 104 and 105 of the Highway Code show that it might have been the intention of the framers of the law to give Justices of the Peace final jurisdiction of violations of the Highway Law. However they failed to do so and Justices of the Peace have final jurisdiction only of those offenses specially designated by statute. Hence Justices of the Peace only have preliminary jurisdiction in Highway violations. However, all County Courts have final jurisdiction and practically all Inferior Courts created by local act this, of course, depends upon the act creating them.

Subsection (a) of Section 104 seems to give the arresting officer the right to accept bond approved by him, this section is as follows:

"Whenever any person is arrested for a violation of any provisions of this article punishable as a misdemeanor, the arresting officer, shall as otherwise provided in this section, take the name and address of such person and the license number of his motor vehicle and issue a summons or otherwise notify him in writing to appear at a time and place to be specified in such summons or notice, and such person shall, if he so desires, have a right to an immediate hearing or a hearing within twenty-four hours at a convenient hour and such hearing to be before a magistrate within the county or city wherein such offense was committed. Such officer shall thereupon and upon the giving by such person of a sufficient written bond approved by the arresting officer, to appear at such time and place release him from custody.

"Any person refusing to give such bond to appear shall be taken immediately by the arresting officer before the nearest or most accessible magistrate.

"Any person who wilfully violates his written bond to appear, given in accordance with this section, shall be guilty of a misdemeanor regardless of the disposition of the charge upon which he was originally arrested.

"(b) The provisions of subsection (a) of this section shall not apply to any person arrested and charged with an offense causing or contributing to an accident resulting in injury or death to any person nor to any person charged with reckless driving in excess of fifteen miles per hour within a business district or residence district or in excess of forty-five miles per hour outside of a busines or residence district nor to any person charged with driving while under the influence of intoxicating liquor or narcotic drugs nor to any person whom the arresting officer shall have good cause to believe has committed any felony, and the arresting officer shall take such person forthwith before the nearest or most accessible magistrate.

"(c) Any officer violating any of this section shall be guilty of misconduct in office and shall be subject to removal from office."

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 12, 1932.

Hon. P. B. Jarman, Jr.,
Secretary of State,
CAPITOL.

Legislative Records—Secretary of State the sale and exclusive custodian.

Opinion by Assistant Attorney General McCall.

Dear Sir:

This acknowledges receipt of your letter of December 14, 1931.

You state that you find that in the past it has been the custom of the Secretary of State to transfer articles to the Department of Archives and History, among these items being the House and Senate Journals of the Legislature.

You request my opinion.

"Should these records be retained by the Secretary of State?"

Your attention is invited to Sub-section (1) of Section 778, Code of Alabama, 1923, specifying among the duties of the Secretary of State the following:

"778. Duties of the secretary of state.—It is the duty of the secretary of state. (1) To keep the state seal, the original statutes, and public records of the state, the records and papers belonging to the legislature, keeping the papers of each house separate."

Sections 1516, 1517, 1518, 1519, and 1536, Code of Alabama, 1923, read as follows:

"1516. Papers of legislature; deposit of.—At the close of each session, the secretary of the senate and the clerk of the house of representatives, and secretary of state must select all the papers belonging to the legislature except such as relate to unfinished business, and deposit them in the office of the secretary of state."

"1517. Engrossed copies of laws, etc., to be preserved.—The engrossed copies of all laws and joint resolutions passed by the legislature must be preserved by the secretary of the senate and clerk of the house, and deposited in the office of the secretary of state."

"1518. Papers and documents, how filed and arranged.—The secretary of the senate, and the clerk of the house of representatives must, within ten days after the adjournment of each session, assort all papers and documents of their respective houses relating to the unfinished business of the session, and arrange them in files, as follows:

"1. All petitions, with the accompanying documents, to be arranged and filed in alphabetical order, tied up in convenient packages with a label on each showing the character of the documents, and the session to which they relate.

"2. All bills rejected on the third reading must be arranged, filed and labeled in like order; and so of bills which were not reported favorably from a standing committee; the labels in each case showing the disposition of the bills.

"3. All communications from the governor, auditor, treasurer, or other officer or person, which have been received during the session, and not entered at length on the journals, must be arranged, filed, and labeled in separate packages, showing from what department, officer or person the same were received.

"4. Special reports from standing and select committees must be arranged, filed, and labelled in like manner.

"5. Any other papers or documents, not included under either of the foregoing heads, must be arranged, filed, and labeled as miscellaneous papers; the labels showing the session to which they belong, and as near as practicable, the character of the papers; and, in every instance, to which house of the legislature they belong."

"1519. Secretary of state to receipt for papers.—The records, papers, and documents, thus arranged, filed and labeled, must be delivered to the secretary of State, who, upon receipt of the same, must certify that such secretary and clerk have, respectively, complied with the requirements of the preceding section; and no warrant must be drawn by the state auditor, and no money paid by the state treasurer for such services, without the production of such certificate, which must be kept by the state treasurer as a voucher."

"1536. Secretary of senate and clerk of house to file papers and furnish copy of journal.—Within thirty days after the adjournment of any session of the legislature, the secretary of the senate and the

clerk of the house of representatives must file and arrange the papers of their respective houses in the office of the secretary of state, and copy and deliver to the public printer the journals of their respective houses, with proper indexes thereto; and for such services when performed, they shall receive respectively, the sum of eight hundred dollars, and the sum of sixteen hundred dollars is appropriated for such services when performed."

The originals of Acts and resolutions adopted by the Legislature, the engrossed bills, enrolled bills, indexes, registers and journals of the respective houses of the Legislature never cease to be current within the terms of either Section 1406 or 2692, Code of Alabama, 1923. The Secretary of State is the only legal custodian of the body of the laws of Alabama. Sections 1406 and 2692, supra, must be read in pari materia with Sections 1516, 1517, 1518, 1519, and 1536. Code of Alabama, 1923. The Legislature by the provisions of Sections 1516, 1517, 1518, 1519, and 1536, has given specific directions as to the final disposition of its records, papers, and documents, and by these Code provisions has placed the final and exclusive custody of all of its records in the Secretary of State.

It is therefore illegal for these books, papers and documents to be transferred to the Department of Archives and History and the Secretary of State should recover them and file them properly in his office.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 13, 1932

Hon. Arthur H. Berg,
Chairman, Board of Registrars,
Mobile, Mobile County, Alabama.

Registrars without authority to transfer voters from one precinct to another.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of December 9, 1931, in which you request my opinion as follows:

"Has the Board of Registrars of Mobile County the right, under the law, to transfer qualified voters from one ward or precinct to another ward or precinct in the county?"

I know of no statutory authority or constitutional provision giving the **registrars** the authority to transfer a voter from one precinct to another in the same county, or from one ward to another in the city.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 13, 1932

Hon. J. W. Hamilton,
Tax Collector, Jefferson County,
Birmingham, Alabama.

1. Section 3973 of the Code implies the authority of a bank organized under the laws of the State of Alabama and operating in the State of Alabama to pledge its assets with any of the officers named therein as security for a deposit by any of such officers of the revenue of the State or County or any money paid into his office, or received by him in his official capacity.

2. The taking of such security from a State bank, in good faith and seeing that the deposit is kept sufficient, by any of the officers mentioned in said Section 3973, does not protect such officer from civil liability for such deposit in a State bank; but, only from criminal liability.

3. The authority of a national bank to pledge its assets as security for a general deposit by a State or County officer of the revenue of State or County is governed by the statutes of the United States as interpreted by the Supreme Court of the United States.

I have been unable to find any such authority.

Opinion by Assistant Attorney General Evans.

Dear Sir:

I have your letter of October 14th, 1931. You write as follows:

"Certain banks, both State and National, in which I, as Tax Collector, of Jefferson County, propose to deposit public funds, propose to secure such deposits by pledging certain of their assets. Will you advise as to each class of bank, both State and National?

"1. Has such bank the right to pledge to me, in my official capacity, to secure the deposits of public monies, general assets of the bank.

"2. If the answer to the preceding question is in the affirmative, then what class or types of securities may such bank validly pledge?

"3. In the event of such pledge, followed by the failure of the bank making the pledge, would I, in my official capacity, have a prior claim of the securities so pledged, which should rank ahead of the claim of other creditors of said closed bank.

"4. Would I be protected from criminal or civil liability, if I accept such pledge and the securities later should become less valuable than at the time the pledge is made, resulting in the loss of public money, provided I was guilty of no negligence in the first instance in accepting the securities' pledge?"

In reply will say that State banks, organized under the laws of the State of Alabama and operating in the State of Alabama, are governed by the laws of the State of Alabama. National Banks are controlled by the statutes of the United States.

We will first consider the status of a bank organized under the laws of the State of Alabama and operating in the State of Alabama.

By Section 3973 of the Code of Alabama, 1923, it is provided:

"Embezzlement by public officers.—Any probate judge, clerk of a court of record, register of the circuit court, sheriff, coroner, tax collector, county treasurer, trustee of public schools, notary public, justice of the peace, constable, or other public officer who knowingly converts to his own use, or permits another to use any of the revenue of the state, or of any county thereof, or any money paid into his office, or received by him in his official capacity, is liable to indictment, and, on conviction, must be punished as if he had stolen it; but none of the officers herein named shall be criminally liable under the provisions herein contained for depositing the revenue of the state or county, or any money paid into his office or received by him in his official capacity, in a bank if the officer making the deposit in good faith requires, and takes from the bank, at or before making the deposit, good and sufficient security to secure the payment of the funds deposited."

In my opinion, the provision in the said Section: "But none of the officers herein named shall be criminally liable under the provisions herein contained for depositing the revenue of the State or County, or any money paid into his office or received by him in his official capacity, in a bank if the officer making the deposit in good faith requires, and takes from the bank, at or before making the deposit, good and sufficient security to secure the payment of the funds deposited," implies the authority of a bank organized under the laws of Alabama and operating in the State of Alabama, to pledge its assets for such security, just as

it has authority to pledge such assets as security for any other loan secured by the bank.

The above answers questions 1 and 2 of your inquiry, so far as banks organized under the laws of the State of Alabama and operated in the State of Alabama are concerned.

In answer to your third question as applied to said State banks, will say that in my opinion you would have a prior claim to the securities so pledged except where you had actual or constructive notice of such prior claim.

In answer to question four, as applied to such State bank, will say that, in my opinion, if you acted in good faith in accepting the security and regarded the security as sufficient at the time accepted and at the time default occurred, you should not be held criminally liable. Whether or not you act in good faith, in any case, will likely be a question of fact for a jury to decide. On questions of fact we cannot advise, but only on questions of law when the facts are established or admitted by all concerned.

The latter part of this Section of the Code was, in my opinion, never intended to protect an officer from civil liability; but from criminal liability only when acted upon in good faith.

So far I have been unable to find any authority under the statutes of the United States or under the decisions of the United States Supreme Court authorizing a National Bank to use its assets as security for a general deposit in such bank.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 13, 1932

Hon. G. H. Howard,
Judge of Probate, Elmore County,
Wetumpka, Alabama.

An instrument given by a mortgagor to the mortgagee in settlement of a prior mortgage debt on the same property conveyed in the first instrument, reserving in second instrument the right of redemption, is a mortgage, conditional sale or other instrument of like character, and falls under the provisions of Section 4½ of Act No. 172, approved August 22nd, 1923.

Where a deed is given by the mortgagor to the mortgagee to the property conveyed by the mortgage, in full payment of the mort-

gage debt, and no rights reserved, a deed filing tax as provided by Section 21½ of Act No. 163, approved July 22nd, 1927, is required on filing for record.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of December 12th, 1931, reads as follows:

"Please advise us if we should collect a deed or filing tax on a deed given in lieu of a foreclosure deed, where the mortgagors deed the property to the mortgagee in consideration of the payment of the debt, and where the mortgagors are given the usual two years right of redemption?

"Also should we collect the tax in case the right of redemption is not reserved?"

In reply will say that, in my opinion, the first instrument, mentioned by you, is not a deed within the meaning of Section 21½ of Act No. 163, approved July 22nd, 1927; but is a mortgage, conditional sale, or other instrument of like character, and, on being filed for record, requires the payment of the mortgage filing tax provided by Section 4½ of Act No. 172, approved August 22nd, 1923.

The second instrument mentioned by you, where a deed is made by the mortgagor to the mortagee to the same property formerly conveyed by the mortgage, in full payment of the mortgage debt, and no rights or interest reserved, is a deed within the meaning of Section 21½ of Act No. 163, approved July 22nd, 1927. By this deed the mortgage is paid and ceases to be a part of the title. The last deed conveys the title to the grantee and forms a necessary link of the title in him. When such a deed is offered for record the filing tax provided under said Section 21½ of said Act No. 163, must be paid.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 14, 1932

Hon. Roy O. Hill,
Clerk Circuit Court,
Dothan, Houston County, Ala.

The Act of the Legislature approved July 28, 1931, which has reference to the duties of clerk of the circuit court does not apply to said clerk while acting as ex officio clerk of the county court.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I am in receipt of your letter of January 2, 1932, in which you request my opinion as follows:

"Kindly refer to Act of 1931, page 668, with reference to reissuance of subpoenas by clerks, and advise me if this Act applies to county court."

In my opinion it does not. The clerk of the circuit court is only ex officio clerk of the county court, and he is made this by statute.

See Section 3803, Code of Alabama, 1923.

Therefore, the Act, supra, where it refers to the clerk of the circuit court, does not and could not, under the wording there used, have any reference to his duties as ex officio clerk of the county court.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 14, 1932

Hon. J. M. Money,
Judge of Probate, Jackson County,
Scottsboro, Alabama.

The decree of the Circuit Court, in equity, partitioning land on the application of one or more tenants in common, is not a deed, bill of sale, or other instrument of like character, within the meaning of Section 21½ of Act No. 163, approved July 22nd, 1927; and hence, requires the payment of no filing tax, under said Section, when offered for filing by the Register under the decree of the Court.

Opinion by Assistant Attorney General Evans.

Dear Sir:

I have your letter of December 13, 1931, You write as follows:

"We had a man die in this County leaving no will and leaving heirs who were all over the age of 21 years, and leaving a large tract of land.

"Some of the heirs filed a bill of complaint in the Circuit Court in Equity for partition of the land between the nine heirs.

"Three Commissioners were appointed by the Court to make partition of the land, who performed their duties as such and made their report to the Court.

"Upon the Report of Commissioners, the Court made an order confirming the report and dividing the land into nine equal parts, and awarding one share to each person.

"The Court in its decree, ordered that the Register file a copy of the decree showing the division in the office of the Probate Judge for record, which has been filed.

"I desire your opinion as to whether or not said decree is subject to the deed tax?"

In reply will say that I presume the order for the Register to file copy of the decree in the Office of the Judge of Probate of Jackson County was by virtue of Section 9304 or of Section 9313 of the Code, 1923, of Alabama. I also presume that when you speak of "deed tax" you mean the tax required by Section 21½ of Act, No. 163, approved July 22nd, 1927.

If my presumptions stated are correct, and there is no other statute applying to the matter—and none has been called to my attention—then, in my opinion, no deed filing tax is required on the filing of such decree for record. Such decree is not a deed, bill of sale or other instrument of like character within the meaning of said Section 21½.

It may be questioned as to whether or not either Section 9304 or Section 9313 of the Code of Alabama, 1923, has any application to cases where application is made to the Circuit Court in Equity for partition. But, whether it has or not is immaterial for answer to the question asked.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 14, 1932

Hon. S. R. Butler,
State Tax Commissioner,
CAPITOL.

Gasoline—Mixed with benzol, what tax due.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of November 17, 1931. You state that the Sloss-Sheffield Steel and Iron Company manufactures "Benzol" which the company blends with gasoline then stores the blended fuel in their own tanks

and afterwards withdraws same therefrom for use in their own trucks. The Company claims to pay tax on the gasoline used in the mixture, but denies liability for the excise tax on the "Benzol" as it is not shipped "into this state in tank quantities" and stored for future withdrawal. You further state this Company does not deny that it manufactures "this product," stores it in their tanks, and later withdraws it for use in their own trucks. You call attention to Section 1, Gasoline Excise Tax Act of 1927, stating the term "storer," as including certain persons named therein. You contend that Section 1 of said Act was not intended to limit the definition of the word "storer" to the persons named therein, inasmuch as the Section used the word "include" in reference thereto.

You request my opinion:

> "Is the 'Benzol' so used subject to the excise tax on liquid motor fuels within the gasoline tax acts?"

In answer will say that the liquid product commonly known as "Benzol," which is a by-product of the gases released in manufacturing coke from coal, is not, in its natural state, a substitute for gasoline commonly used in internal combustion engines. It might be possible to so equip a motor that it might operate with Benzol unmixed with gasoline, but motors are not generally equipped for such use. "Benzol" is often used in a mixture with gasoline in a certain proportion and the mixture is commonly used in internal combustion engines as a substitute for ordinary gasoline.

As I understand the facts in the instant case the Company purchases gasoline in tank quantities, stores the same, withdraws it, pays the tax on the gasoline, conducts it into another tank where it is mixed with Benzol, and then withdraws the mixture (which is a gasoline substitute) for use in its own trucks and possibly for sale also. The Company is due a tax on the withdrawal of the mixture, on that part thereof in excess of the amount of gasoline proper on which the tax has been paid.

The tax on the "storer" is on **withdrawal or use for any purpose.** The method adopted by the company does not constitute a final withdrawal or use until the mixture is withdrawn or used.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 14, 1932

Hon. McK. Lovett,
Tax Collector, Winston County,
Double Springs, Alabama .

Tax Collector must first exhaust the personal property of a taxpayer, when such property can reasonably be found, before applying to the Probate Court for an order to sell the assessed real estate of a delinquent taxpayer.

Where demand is made by the Tax Collector on such delinquent for personal property assessed against him, and such taxpayer refuses or fails to give proper information to the Tax Collector so that he may sell such personal property for the payment of the taxes, then the Tax Collector would be authorized to make the report that no personal property could be found out of which the taxes of delinquent could be made, or an amount insufficient to fully satisfy such taxes, as provided by Section 240 of the Revenue Act, 1919, (Acts 1919, page 352).

Opinion by Assistant Attorney General Evans.

Dear Sir:

I have your letter of December 8, 1931. You write as follows:

"If John Doe had $100.00 worth of real estate and $100.00 worth of personal property assessed, would a Tax Collector have to go to John Doe's place and see if he could find this personal property, before he could make a legal sale of real estate for delinquent taxes?

"If a Tax Collector does not try to exhaust personal property where there is real estate also assessed can the real estate be advertised legally?"

In reply will say the answer to your question depends largely upon the integrity of the Tax Collector. Section 212 of Revenue Act, 1919, provides:

"When no personal property can be found out of which the taxes of any delinquent taxpayer can be collected, or an amount insufficient to fully satisfy such taxes, the real estate of such taxpayer, or the real estate upon which such taxes are a lien, shall be sold for the payment thereof, or of the balance due thereon, in the manner hereinafter in this act prescribed. But the failure of the tax collector to so exhaust such personal property shall not invalidate the sale of any real estate.

Section 240 of the Revenue Act, 1919, provides:

"The probate court of each county is empowered to order the sales of lands therein for the payment of taxes assessed on such lands, or against the owners thereof, when the tax collector shall report to the court that he was unable to collect the taxes assessed against such land, or any mineral, timber, or water right or special right, or easement therein, or the owner thereof, without a sale of such land."

You will see from said Section 212 that the Tax Collector can sell the real estate only when no personal property can be found out of which the taxes of any delinquent taxpayer can be collected, or an amount insufficient to fully satisfy such taxes.

This implies, in my opinion, that the Tax Collector will make reasonable effort to find personal property before attempting to sell real estate. The last sentence of said Section 212: "But the failure to so exhaust personal property shall not invalidate any sale of real estate," was not intended to relieve the Tax Collector of a reasonable effort to find personal property; but, if after reasonable effort, he has been unable to find personal property, and he proceeds to sell real estate of the taxpayer, the taxpayer cannot avoid the order of sale by the Probate Court by showing that the Tax Collector had not exhausted the personal property, or when made, nullify the order by showing that the Tax Collector had failed to exhaust the personal property.

Such troubles occasionally came up before the law was changed by adding the last sentence of said Section 212 in the Revenue Act of 1919. If the taxpayer should point out personal property, belonging to him, upon which the State and County had a lien for payment of such taxes, or personal property, belonging to him, upon which no other had a lien, before the Collector proceeded to obtain an order from the Probate Court to sell the real estate, it would in my opinion, become the duty of the Tax Collector to exhaust such personal property before proceeding for an order of sale of the real estate of such taxpayer.

When you take into consideration both said Sections 212 and 240, it is my opinion that no other reasonable conclusion could be reached. By Section 240, in order to give the Probate Court jurisdiction, the Tax Collector must, in each case, "report to the Court that he was unable to collect the taxes assessed against such land, or any mineral, timber, or water rights or special right, or easement therein, or the owner thereof, without a sale of said land."

It is presumed that no such report will be made to the Court where no effort has been made to find the personal property assessed to such person. If the taxpayer should refuse or fail, to point such personal prop-

erty, when called upon, this, in my opinion, would authorize the making of such report and proceeding for an order to sell the land.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 15, 1932

Hon. G. L. Malone,
Judge of Probate, DeKalb County,
Fort Payne, Alabama.

Publication of notice by county—how regulated and paid.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of December 13, 1931, in which you request my opinion as follows:

> "Is it the duty of the Commissioners and myself to seek lowest bids for the publication of our Financial Report and other County printing, or to select such paper as they see fit and pay the regular legal rate?"

In answering your inquiry I call your attention to Section 6767, Code of Alabama, 1923. You will note the latter part of this Section which refers to the making of this particular publication:

> ". . . The compensation to be paid for the publication herein provided for shall not exceed $100.00 in counties of less than 40,000 population according to the last or any subsequent Federal Census."

However, this limitation does not apply to your County, as the last Federal Census places your population above 40,000. I call your attention to Section 9662, Code of Alabama, 1923. Here the rate for such publication is fixed at not more than one and one-half cents per word for the first insertion, and one cent per word for all subsequent insertions. The publication which you are writing about and which we are now dealing with, does not have to appear but once. Therefore, if you paid the regular rate it would be one and one-half cents per word.

Again your attention is called to Section 9262, Code of Alabama, 1923. This Section should be followed strictly. I suggest that there is nothing that would prohibit the County through its constituted authori-

ties from contracting with any printing concern to do this printing at a reasonable price regardless of the rate fixed by statute.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 15, 1932

State Tax Commission,
CAPITOL.

Attention: Mr. John S. Mooring,

(1) State Tax Commission under Section 12, Acts 1927, page 16, may employ assistants for the collection of delinquent gasoline taxes under said Act such assistants to be paid on a percentage basis on the amount of such delinquent or escaped taxes collected.

(2) The Tax Commission is likewise authorized to employ assistants on such basis under the Gasoline Act of 1923, provided the total cost of administration and collection does not exceed $12,000.00.

Opinion by Assistant Attorney General Moore.

Gentlemen:

I have your letter of December 15, 1931, in which you state:

"Apparently reliable information is, from time to time, being given to this Commission that a considerable amount of gasoline tax is escaping and will not be discovered by any of the present agencies of this Commission. We have several propositions from parties who wish to make a contract with this Commission for the collections of these escaped taxes on a percentage basis. We think we have authority to make such contract but that there may be no doubt about the matter we are requesting your opinion.

"The provisions of the law respecting the cost of enforcing the Gasoline Act are found in Section 10 of the Gasoline Tax Act of 1923 (Acts 1923, p. 38), Section 83, Acts 1923, p. 197, and in Section 12, Acts 1927, p. 19."

In reply I beg to advise that under the provisions of Section 83, Acts 1923, page 152, the State Tax Commission is authorized to deduct from the proceeds of the collections under such Act "costs and expenses of administration and collection which amount shall not exceed $12,000.00 per annum."

It is my opinion therefore that you cannot deduct more than $12,000.00 per annum from the amount collected under the 1923 Act.

Section 12, Acts 1927, page 16, provides as follows:

"Tax Commission to Enforce.—The forms for all statements and reports required in the provisions of this Act shall be prescribed and furnished by the State Tax Commission and the cost of the enforcement of this Act shall be paid out of the funds derived from the excise tax herein prescribed upon a warrant of the State Auditor upon a voucher of the Chairman of the State Tax Commission and approved by the Governor."

It will be seen therefore that the entire cost of the enforcement of this Act shall be paid out of the funds derived therefrom.

Therefore in my opinion you are authorized to expend whatever sum is reasonably necessary to enforce the collection of this tax. Therefore, if you should deem it advisable to employ parties for the collection of delinquent or escaped taxes under this Act on a percentage basis, based upon the amount collected rather than on a straight salary basis, I see nothing in the Act inhibiting you from so doing. Nor, in my opinion is there anything in the 1923 Act, inhibiting such employment provided that the total compensation and other expenses do not exceed $12,000.00 per annum.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 15, 1932

Hon. F. W. McLane,
Circuit Clerk, Talladega Co.,
Talladega, Alabama.

Bastardy proceedings—Cost, how paid when defendant convicted and when defendant acquitted.

Opinion by Assistant Attorney General McCall.

Dear Sir:

This acknowledges receipt of your letter of November 13, 1931.

You request my opinion.

When a defendant is convicted for the offense of bastardy and, failing to give bond as required by Section 3428, Code of Alabama, 1923, is sentenced to hard labor as provided by said Section, are the witnesses' fees payable from the fine and forfeiture fund, and would an execution have to be issued against said defendant first and be returned by the sheriff "no property found" before such fees would be payable from said fund?

In answer will say that where one is convicted in a bastardy proceeding the costs are taxed against the defendant, and in no event are such costs payable by the county or out of the fine and forfeiture fund thereof. A prosecution for bastardy is neither strictly civil nor strictly criminal, but partakes of the nature of both, and is rather of a quasi-criminal character.—**Dargan vs. State,** 72 Ala. 173.

It is not a public offense as public offenses are defined and classified by the statutes. Though penal in its character and quasi-criminal it is not a **criminal prosecution.—Section 3416,** Michie's Code, 1928, notes.

Maintenance and education of illegitimate offspring, born or to be born is the object of Section 3416, Code of Alabama, 1923, on the subject.

The constitutional inhibition of imprisonment for debt is not infringed by the imprisonment of the putative father (for the period prescribed by Section 3428, Code of Alabama, 1923) if he fails to execute the bond required of him on conviction. **He is imprisoned not for the failure to pay a debt, but for his failure to perform a duty,**—a duty enforced in the name of the State.—**Paulk vs. State,** 52 Ala. 427, 429.

Where, on a prosecution for bastardy, the State fails to make out a case against the accused, the woman must pay the costs, even though the State, and not the woman, is a party.—**Hanna vs. State,** 60 Ala. 100, 102; and on notes, Section 3422, Michie's Code, 1928.

In this connection see Section 3438, Code of Alabama, 1923 which reads as follows:

> "3438. Complainant pays costs on verdict for defendant.—In case the issue provided for by section 3425 (6373) is found against the complainant, judgment for costs must be rendered against her."

Berryman vs. County Court, 9 Ala. 455, 459.

Now Sections 3427 and 3428, Code of Alabama, 1923, provide as follows:

> "3427. On conviction, judgment for costs, and bond required to support and educate child.—On the trial of such issue, if found against the defendant, judgment must be rendered against **him** for the **costs, and** he must also be required to enter into bond with surety, to be approved by the judge, in the sum of one thousand dollars, payable to the **state,** and **conditioned to pay the costs of the proceeding,** and such sum, not exceeding one hundred dollars a year, as the court may prescribe, on the first Monday in January, in each year, **for ten years,** to the judge of probate of the county, for the support and education of the child, which bond must be recorded."

"3428. Judgment on failure to give bond.—On **failure** to give such bond, the court must render judgment against the defendant for such sum as, **at legal interest, will produce the amount directed to be paid yearly; and he must also be sentenced to hard labor** for the county for one year, unless in the meantime he executes the bond required, or pays the judgment and costs. If the defendant is sentenced to hard labor, the proceeds of his hire or labor shall be paid to the judge of probate for the support and education of the child, as is provided in section 3427 (6276) of this Code."

From the foregoing it will be seen that where a defendant is acquitted the prosecutrix pays the costs, and where the defendant is convicted, such defendant is liable for the costs. The authority of the court in sentencing him to hard labor is definitely specified as one year which is the full amount of time—no more, no less—to which he must be sentenced on failure to pay "judgment and costs." In the event he is so sentenced **for one year** at hard labor all the proceeds of his hire or labor must be paid to the judge of probate for the support and education of the child, as is provided in Section 3427, Code.—See Section 3427, supra.

The opinions of January 6, 1928, to Circuit Clerk, Tuscaloosa County (Opinions Attorney General, 1926-28, pp. 407, 408) and March 23, 1928 to Hon. Hamp Draper, Associate Member, State Board of Administration (Opinions Attorney General, 1926-28, pp. 480, 481) and May 9, 1928, to Circuit Clerk, Coosa County (Opinions Attorney General, 1926-28, p. 525) and of April 28, 1931, to County Treasurer, Fayette County (Book 3, Office Edition, 1931, pp. 312, 316), and of May 19, 1931, to Circuit Clerk, Washington County (Book 4, Office Edition p. 108) are hereby modified to meet the foregoing.

All of the foregoing opinions overlook the facts that (1) a bastardy proceeding is not a criminal prosecution, and (2) that in acquittals, specific provision is made by Section 3438, that the complainant pay the costs, and (3) that where defendant is convicted he alone is liable for the costs, and (4) the decisions of the court in the cases cited.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 15, 1932

Mrs. Gertrude P. Calloway,
County Treasurer, Chilton County,
Clanton, Alabama.

(1) Courts of county commissioners and boards of revenue have authority under Section 157 of an Act approved August 23, 1927 (General Acts 1927, p. 391), to employ a clerk and to provide a salary

for same whose duties shall be limited to the construction, maintenance and improvement of public roads of the county.

(2) An order made for the employment of such clerk and fixing his salary, cannot be made retroactive so as to take care of salaries accumulated before the passage or adoption of said order.

Opinion by Assistant Attorney General Haynes.

Dear Madam:

I have your letter of June 3rd in which you request my opinion as follows:

1st. Is the Court of County Commissioners of this County authorized to employ a clerk whose duties shall be in connection with the maintenance, construction and supervision of the public roads of the county?

2nd. If you hold that said employment is valid, is the order for the payment of such services from January 1st to May 1st, 1931, all prior to the order on the minutes, sufficient authority for me paying said salary from January 1st to May 1st, both inclusive?"

It is my opinion that under Section 157 of an Act approved August 23, 1927 (General Acts 1927, p. 391) the Court of County Commissioners of your County is authorized to employ a clerk for said court whose duty shall be limited to the purpose or purposes contained in said Section, which is as follows:

"Section 157 (1347) POWERS OF COURTS OF COUNTY COMMISSIONERS WITH REGARDS TO ROADS, BRIDGES AND FERRIES.

The courts of county commissioners, boards of revenue, or other like governing bodies of the several counties of this State have general superintendance of the public roads, bridges and ferries within their respective counties so as to render travel over the same as safe and convenient as practicable. To this end they have legislative, judicial, and executive powers, except as limited in this article. Courts of county commissioners, boards of revenue, or courts of like jurisdiction are courts of unlimited jurisdiction and powers as to the construction, maintenance and improvement of the public roads, bridges and ferries in their respective counties, except as their jurisdiction or powers may be limited by the local or special statutes of the state. They may establish, promulgate and enforce rules and regulations, make and enter into such contracts as may be necessary, or as may be deemed necessary or advisable by such courts, or boards, to build, construct, make, improve and maintain a good system of public roads, bridges and ferries in their respective counties, and regulate the use

thereof; but no contract for the construction or repair of any public roads, bridge or bridges shall be made where the payment of the contract price for such work shall extend over a period of more than ten years."

You will note all the powers of civil government are conferred on such courts, viz., legislative, judicial and executive with certain minor limitations, and the same section confers on such courts unlimited jurisdiction and powers in the supervision, construction and maintenance of the public roads of the various counties of the State. Again, this section gives them power to enter into such contracts as may be necessary or **may be deemed necessary or advisable, etc.**

With this grant of power it leaves the matter purely in the discretion of such courts as to the necessity of such contracts, and the order herein set out, is nothing more or less than a contract. I see no reason why, if the court should determine that it is necessary to have a clerk of said board to perform certain duties in the supervision, building and maintaining of the public roads of the county, they could not employ the same by an order such as the one under consideration here, which order is as follows:

"On May 23, 1931, said Court adopted the following order:

"1. Whereas, the Court of County Commissioners of Chilton County, Alabama, has adopted a law pertaining to Roads, Bridges and Ferries and whereas they are sundry duties to be performed by the Court relative to the performance and operation of said law, relative to the roads, bridges and ferries of the County, and, whereas, the Court deems it to be for the best interest and for the proper performance of said laws and their application pertaining to roads, bridges and ferries that a Clerk be appointed in and by virtue of Section 157 of General Acts 1927, page 391, to perform and carry out, as Clerk of the Court all duties, laws and orders of said Commissioners Court under the authority of said Section 157 General Acts, 1927, page 391. Be and it is therefore ordered by the Court of County Commissions of Chilton County, that Dolly Arant be and she hereby is appointed as such Clerk of Court of County Commissioners of Chilton County, to perform and carry out all duties pertaining to roads, bridges, and ferries as above enumerated at a salary of $65.00 per month, said sum to be paid monthly to said Clerk in the manner provided by law."

Biennial Report of Attorney General, 1928-30, p. 977.

In the opinion just cited above, this office had before it the exact question we have here under consideration, and in this opinion the Attorney General held that such clerk could be appointed by the court, limited to the duties imposed by Section 157 of the Act approved August 23, 1927.

It is true under Section 6763, Code of Alabama, 1923, we have the following provision:

"It is the duty of the Judge of Probate to record the proceedings of the Court of County Commissioners, make all necessary orders and issue all process necessary to sustain its jurisdiction, or maintain its authority."

Again in Section 6744, Code of Alabama, 1923, we have this provision:

"Where the Probate Judge is absent and where the Court of County Commissioners is held without the attendance of the Probate Judge, a special clerk must be appointed for such term who must be paid by the Judge of Probate."

But it must be remembered that these two sections have to do with the **general** duties of such court or board, and not with special duties which have been conferred on said court or **board through its legislative powers.** Therefore, if the court is authorized to employ such clerk it naturally follows that it has the right to make provisions for the payment of his salary, and, in my opinion, such salary is payable out of any of the road and bridge funds of the county not otherwise appropriated, but is not a proper charge against the general fund.

Second, it is my opinion that no order of this character could be made retroactive so as to take care of salaries earned before the adoption of the order. Without the order there could be no such thing as a clerk, and certainly until this position is provided for no matter what the service of any individual has been along this line, there could be no pay. Therefore, it is my opinion that you would be only authorized to pay the salary from and after the adoption of the order.

This opinion is overruling an opinion of this office written July 29, 1931, which was addressed to Mrs. Gertrude P. Calloway, County Treasurer of Chilton County, the same party to whom this opinion is addressed.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 19, 1932.

Hon. R. T. Simpson, Jr.,
Solicitor, 11th Judicial Circuit,
Florence, Alabama.

1. Construction of Section 6131 of the 1923 Code on the point as to whether a county is required to execute a security for costs in an appeal where an action has been brought in its name under Section 751 of the 1923 Code.

2. Construction of Section 751 of the 1923 Code as to the authority and duty of the Circuit Solicitor in signing the name of the plaintiff county to a security for cost of appeal where an action is brought by the county in said Section.

Opinion by Assistant Attorney General Evans.

Dear Sir:

I have your inquiry of January 15, 1932, relating to the proposed appeal by the County in the pending case of Colbert County vs. Tennessee Valley Bank. You have submitted the following inquiries:

1. Is it necessary to secure the cost of appeal, the appeal being taken by the County in this case?

2. Whether you, as Circuit Solicitor, are authorized under the law to sign the name of the County to such security in the event it is required?

Answering the first question:

Section 6131 of the 1923 Code requires a security for the cost of appeal in a case like this. This statute has been construed by the Courts in the reported case of State vs. Page 19, Ala. App. 303, 97 So. 244. By the Court's construction of this statute, the County is required to make security for cost of appeal.

Second, the action in this case was brought by you in your official capacity as Solicitor by direction of law carried in Section 751 of the 1923 Code. Your failure to bring the action in the circumstances recited would subject you to penalty. The enforcement of the County's rights in the matter necessarily carries the right of appeal. The statute places the burden on you of bringing the action and perfecting it as incident of taking the appeal. No discretion rests in the Court of County Commissioners or the Probate Judge as to whether such an action shall be brought or whether such an appeal shall be taken. The law vests you with an authority and duty to bring the action, and in my opinion you have full authority under the law to sign the name of the County by you as Solicitor of the Circuit to any proper and required security for cost of an appeal.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 26, 1932

Hon. L. A. Durham,
Tax Collector, DeKalb County,
Fort Payne, Alabama.

(1) Where a tax collector receives part payment on State and County tax he should remit to proper authorities such portion collected by him on his next report.

(2) Where part payment of total amount of taxes is paid interest should be collected on the balance due and not on that portion paid.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of December 31, 1931, in which you state:

"When I receive part payment on State and County Tax do I send that part payment in when I make the report?

"When a part payment is made on a receipt does the full amount of the receipt draw interest or just the balance that is due on the receipt?"

In answer to your first question, I advise that in my opinion you should remit on all moneys collected by you at the regular time for settlement and report.

In answer to your second question, in my opinion interest should be paid only on the unpaid balance where a portion of the taxes are paid. In this connection I beg to enclose a copy of opinion rendered to Hon. J. W. Hamilton, Tax Collector, Jefferson County.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 28, 1932

Hon. O. L. Haynes, Secretary,
Alabama Real Estate Commission,
CAPITOL.

"Final consummation" as used in the Act creating the Alabama Real Estate Commission limited to the actual closing of a transaction previously entered into.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter relative to questions 1, 2 and 3 suggested by Judge Abernathy in a recent hearing on warrant issued by your Commission.

Our opinions on questions 1 and 2 have already been rendered and are in your possession.

Relative to question 3, to-wit, what is the meaning of the phrase in the statute "power of attorney from owner authorizing the final consummation by performance of any contract for the sale, lease or exchange of real estate," I advise that, in my opinion, this does not and cannot authorize a general power of attorney to a person not licensed to do any and all acts commonly associated with the business of a real estate broker or real estate salesman.

The words "final consummation" are almost self-explanatory. "Final" is defined by Webster's Dictionary as "last, terminating, ultimate, conclusive, decisive." "Consummation" is defined by the same authority as "completion, perfection, end, to bring to completion, to put an end to, finish."

Construing these words along with the remainder of the statute, I can see no application that can be given to them other than the actual meaning of the words that a salesman or broker or other person may have a power of attorney to close a transaction previously begun. Such final consummation presumably means the execution of the deed and the collection of the money perhaps. It is nothing more in my opinion than an effort on the part of the law-makers not to interfere with the ordinary powers of contract, but is not intended to authorize any person to evade or seek to evade the qualification and licensing otherwise provided for real estate agents by securing such a power of attorney.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 28, 1932

Hon. W. C. Batson,
Judge of Probate,
LaFayette, Chambers, Co., Ala.

Roads and Bridges—No part of Special Tax levied under subdivision (a) of Section 215, Constitution is not paid over to municipality.

Opinion by Assistant Attorney General McCall.

Dear Sir:

This acknowledges your letter of December 19, 1931.

You state some of the incorporated towns in Chambers County are calling on you for their portion of the "Road and Bridge Tax" collected within the corporate limits.

You request my opinion:

"Under Section 6774, Code of Alabama, 1923, am I required to remit to such towns one-half of that portion of the tax collected within such towns?"

Section 6774, Code of Alabama, 1923, is as follows:

"6774. One-half road tax collected in municipalities to be paid to city.—The courts of county commissioners and boards of revenue, where there is levied a road tax, general or special, or where by the tax levy a portion of the tax is levied for or devoted to the purpose of constructing, repairing or maintaining roads and highways of any description in the county except the special tax authorized by subdivision (a) of section 215 of the constitution, shall pay over each year to each municipality therein one-half of the money collected on such road tax on the property located in such municipality."

Section 215 Constitution is as follows:

"Section 215. No county in this state shall be authorized to levy a greater rate of taxation in any one year on the value of the taxable property therein than one-half of one per centum; provided, that to pay debts existing on the sixth day of December, eighteen hundred and seventy-five, an additional rate of one-fourth of one per centum may be levied and collected which shall be appropriated exclusively to the payment of such debts and the interest thereon; provided, further, that to pay any debt or liability now existing against any county, incurred for the erection, construction, or maintenance of the necessary public buildings, or bridges or that may hereafter be created for the erection of necessary public buildings, bridges, or roads, any county may levy and collect such special taxes, not to exceed one-fourth of one per centum, as may have been or may hereafter be authorized by law, which taxes so levied and collected shall be applied exclusively to the purposes for which the same were so levied and collected."

Where a special tax for road and bridge purposes is levied and collected under sub-division (a) of Section 215, Constitution an incorporated municipality in the county is not entitled to any part or portion thereof.

City of Montgomery vs. Montgomery County, 185 Ala. 281, 283.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 28, 1932

Hon. Ben F. Giles, Sheriff,
Madison County,
Huntsville, Alabama.

Gambling devices—machine as described below is not a violation of Act No. 671 H-423-Davis of Macon, approved July 25, 1931 (General Acts 1931, pages 806-809).

Opinion by Assistant Attorney General McCall.

Dear Sir:

This acknowledges your letter of recent date. You request my opinion as to whether or not the following described machine is, in itself, a violation of the aforementioned Act.

Your description of the machine is as follows:

"The said machine consists of a rectangular box of a convenient size, being about fifteen inches tall by twelve inches at the base and attractively ornamented. The mints are placed in the machine in such a manner that one, and only one, package of mints is delivered by said machine each time a nickel (5c piece) is deposited by the customer in the slot provided on said machine for that purpose. That said machine is so constructed that it displays said mints to the customer and thus informs him of the kind and character offered for sale thereby.

"In the upper part of said metal box behind a glass window in the front thereof is placed an amusement or advertising feature designed to attract attention to said vending machine, and to amuse the customers thereof and others attracted thereto and to thereby stimulate the sale, by said machine, of the mints contained therein.

"That at the top of said machine appears in bold, raised type and words: 'Play Ball,' Said amusement feature consists of three metal discs or reels upon the outer surface of which appears at close intervals, bright colored pictures of baseball players, baseballs, baseball bats, catchers, basemen and fielders gloves and pennants in various combinations so arranged that when said reels are spun, in the manner described below, they cause a symbolic game of baseball to be provided thereby and may be played thereon by the operator of said

amusement feature, and said machine accurately registers and displays by symbols, the respective positions of the players, the plays made and the respective results as the game progresses.

"In a similar manner, in effect, to that by which the plays in real baseball games are registered and displayed to the public in public places by means of numerous devices in common use for that purpose, said machine registers and displays this symbolic game, and has the additional interesting feature whereby the operator of said amusement feature actually takes part in or actually plays the symbolic game referred to.

"In a metal frame at the top of said machine is placed a card containing full printed instructions for playing the baseball game on said amusement feature on said machine. The front of said machine contains knobs which when turned by the operator records the "runs," "scores," "outs," and "innings." There are also knobs which when turned by the operator places the players in their proper positions. This permits base runners to be properly placed after each spin of the reels or play of the game.

"Said vending machines are operated as follows: The patron deposits a nickel in the slot provided therefor on the machine, pulls a lever attached to the side of the machine, and then turns a knob below which operates the release into an open slot or tray at the bottom of the machine one standard five-cent package of mints. At the same time and by the same operation it causes to drop into a receptacle at the bottom of said machine metal checks or tokens from two to twenty in number, which have no monetary, merchandise or exchange value, but may be used by the customer of said machine solely for the purpose of operating said amusement feature on said machine. Said metal checks or tokens have in plain, easily read lettering, stamped on one side thereof, the words: 'Property of Baseball Vender'; and in similar lettering on the other side thereof the words: "Loaned for amusement only.' On the front of said vending machine is displayed a sign printed in large type informing the operator that packages of mints cannot be obtained by the use of metal checks or tokens, and that said metal checks or tokens can be used to operate the amusement feature only."

"Said vending machine is so constructed that in no instance when it is being operated by said metal checks or tokens does the operator receive, nor will the machine deliver, any mints, merchandise, money or anything of value."

In answer will say that such machine is not per se a violation of said Act.

You must have evidence that same is being used as a gambling device before it would come within the provisions of said Act.

The pertinent provisions of said Act are Sections 1 and 2 which read as follows:

"Section 1. Definitions. That the term gambling device shall include and be deemed to embrace the following: (a) Any machine, mechanical device, contrivance, appliance or invention whatever its name or character, in the use of which a consideration is paid or deposited, and there is gambling or the hazarding of small amounts of money or property. (b) Any machine, mechanical device, contrivance, appliance or invention, whatever its name or character, which determines the result of winning or losing money or property by chance, lot or luck, in which neither the will nor skill of man can operate to influence the result of winning or losing. (c) Any machine, mechanical device, contrivance, appliance or invention, whatever its name or character, for the division of or distribution of either money or articles of personal property, where said distribution of either money or articles of personal property, where said distribution or division is to be determined by lot or chance amongst those who take shares of are interested in the scheme. (d) Any machine, mechanical device, contrivance, appliance or invention, whatever its name or character, which is operated or can be operated as a game of chance. (e) Any machine, mechanical device, contrivance, appliance or invention, whatever its name or character, where money or property is hazarded on chance, or risked on an uncertain event. (f) Any machine, mechanical device, contrivance, appliance or invention, whatever its name or character into which money is placed or deposited upon chance or upon the result of the action of such machine, mechanical device, contrivance, appliance or invention. (g) Any machine, mechanical device, contrivance, appliance or invention, whatever its name or character, which disposes to the player or operator of the same any package of merchandise and also gives the player or operator the chance of placing himself in a position where his next succeeding play will assure him of a return of several times the value of the coin placed therein by him. (h) Any machine, mechanical device, contrivance, appliance or invention, whatever its name or character, intended for the purpose of winning money or any other thing by chance or hazard. (i) Any machine, mechanical device, contrivance, appliance or invention used or intended to be used as a substitute for, or in place of, any machine, mechanical device, contrivance, appliance or invention described in and enumerated in paragraph (a), (b), (c), (d), (e), (f), (g), and (h) of this Act.

"Section 2. Machines or devices not regarded as unlawful.—The provisions of this Act shall not apply to any machine, mechanical device, contrivance, appliance or invention by which merchandise is dispensed in a uniform quantity to each purchaser, although the price may be deposited in a slot in each machine, mechanical device, contrivance, appliance or invention, provided such machine or device cannot be played for money, property, checks, credits, or any other representative or token of value. Nor shall the provisons of this Act apply

to machines or devices where the element of chance is wholly absent, as where the machine or device indicates with absolute certainty, before the player deposits his coin or check, what he will receive from the machine, mechanical, device, contrivance, appliance or invention."

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 28, 1932

Hon. Jos. B. Crow,
Tax Collector, Mobile County,
Mobile, Alabama.

1. A person assessing two or more pieces of property and thereafter selling or disposing of one or more of the tracts cannot pay on the remainder still owned by him and escape liability as to the entire assessment.

2. Tax Collector not required to accept a portion of the taxes due but he may do so provided no lien or rights of the State or counties are waived, in any manner.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of January 6, 1932, in which you ask me to advise you on the following:

"During the proper time for assessments a party makes an assessment covering two or more items that have a separate valuation placed on the tax books by the assessor, then after the assessing time is up, the party sells one or more pieces, giving a deed for same. Can the original owner pay on only that piece or pieces which they still own the following October, or at the time the assessment comes due. In other words, (A) owns two or more pieces of property October 1st, 1930, and makes the necessary assessment, and sometime after February 1931, he sells some of them to (B), can (A) come in and pay on that which he still owns, or must he pay on the assessment as given in by him? I have been letting the buyer pay when he produces a warranty deed in my office, but have not been letting the seller pay unless he pays the entire bill, as shown on the assessment books by the Assessor. Am I within my rights in refusing to accept anything but the full amount of the taxes from the party making the original assessment?

"Again: A party makes an assessment for several separate items and when it comes time to pay the taxes, for some reason or other he decides to let one piece go entirely, and comes in and wants to pay the balance. Under my conception of the law, I refuse to let him pay unless he pays the entire amount as shown on the tax books. He then proceeds to have his Attorney draw up a letter and makes a legal tender for the amount covering only that part for which he wants to pay, and again I return his tender. Am I right in refusing to let him pay unless he pays the entire bill? On refusal the party files an injunction in the Circuit Court, asking that the Court demand that I accept the amount as tendered by him, and eliminating any penalties that might accrue while waiting for the Court to decide the question.

"Again: On January 22nd, 1931, Mr. E. S. Wahl, Cashier Mobile National Bank signed the 1931 assessment for this concern for real estate in the amount of $45,030.00 and on the same assessment signed for $9,000.00 equipment and fixtures. On December 28, 1931, the Attorney for the Bank made legal tender in the amount of $1,251.34 which is the amount of taxes due on the real estate, but refused to pay the taxes due on the equipment, claiming that the National Banks are exempt on all taxes except on real estate, and have filed an injunction with the Courts on the matter. Please advise the writer the proper procedure to follow.

In my judgment the original owner cannot pay on only one piece of the property where he originally assessed two or more pieces. If the purchaser has paid the assessment on the portion bought by him, of course the original owner can pay on the remainder. However, if the purchaser has not paid you cannot accept payment from the original owner except as to the entire assessment and release the entire property of any claim or lien of the State. The assessment is made against the person and it is your duty to exhaust the personal property belonging to the party originally making the assessment before you proceed against the real estate. If this is insufficient, then any part payment which you might accept cannot release the lien of the State against the whole.

In answer to your second question, you have a perfect legal right to refuse to accept payment of any amount less than the entire amount due. In my judgment, the tender of a portion of the taxes cannot affect your rights or the liability of the party for interest after delinquency.

In answer to your third question, I am enclosing an opinion rendered to Hon. J. W. Hamilton, Tax Collector, Jefferson County, which relates to the identical question raised by you.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

January 29, 1932

Hon. Hugh White, President,
Alabama Public Service Commission,
Montgomery, Alabama.

The benefits of the Veterans License Tax Exemption Act of 1931, are extended to a veteran (who is otherwise qualified) who is required to pay the mileage tax mentioned in the Motor Carrier Act of 1931.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

In a conference had with you today, you made inquiry about an Act of the Legislature of Alabama known as the Veterans License Exemption Act. This Act is found on page 397 of the General Acts of the Legislature of Alabama of 1931.

The specific question you propound is as follows: The Motor Carrier Act of 1931 (found at page 303 of the General Acts of Alabama of 1931) provides for the payment of a mileage tax. An Act of the Legislature of Alabama approved July 2, 1931, provides that certain war veterans shall be exempt from the payment of certain licenses. You inquire whether the benefits of the Veterans Exemption Act can legally be extended to a veteran who operates a motor transportation company, as contemplated by the Motor Carrier Act of 1931. In other words, does the Veterans Exemption Act apply to the payment of the mileage tax mentioned in the Motor Carrier Act. You state that the veteran qualifies in every way, provided the term **license tax**, as used in the Veterans Exemption Act, includes such a tax as mileage tax, mentioned in the Motor Carrier Act of 1931. Is the veteran entitled to the credit of $25.00 on the mileage tax payment?

In answer to your inquiry, I beg to advise that, in my judgment, the license tax mentioned in the Exemption Act includes such a mileage tax as is described in the Motor Carrier Act of 1931. Section 5 of the Act, Veterans Exemption Act, in part provides:

"The term 'license tax' as used in this Act, shall be deemed to include any tax prescribed by a license tax schedule, but not to exclude any license tax otherwise prescribed."

The pertinent part of the Motor Carrier Act of 1931, provides:

"Section 5. Every motor transportation company doing business in this state and subject to the control and jurisdiction of the commission shall pay to the state as contribution to the maintenance, repair and policing of its public highways for each mile actually operated within the state over such public highways a mileage tax of

one-fourth cent per mile on all passenger vehicles with a seating capacity of sixteen passengers or less; and a mileage tax of one-half cent per mile on all passenger vehicles with a seating capacity of not less than seventeen and not more than twenty passengers; . . ."

The mileage tax imposed by the Motor Carrier Act was imposed as a regulatory measure and also as a revenue raising measure. The mileage tax or fee referred to in the Motor Carrier Act is included in the license tax referred to in the Veterans Exemption Act. Licenses are often referred to as license fees or license taxes. License fees or taxes may be imposed for regulation or for revenue or for prohibition. License fees or taxes may be imposed for the purpose of regulation **and** revenue, as provided by the Motor Carrier Act of 1931. The Mileage tax or fee imposed by the Motor Carrier Act is undoubtedly a license fee or tax.

In my judgment, the license tax mentioned in the Veterans Exemption Act includes the mileage tax imposed by the Motor Carrier Act. In the payment of the mileage tax, such a veteran (qualified in every other respect) is entitled to the benefits of the Veterans Exemption Act, by a credit of $25.00 on the mileage tax payment.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 3, 1932

Hon. M. J. Funchess,
Dean and Director,
Agricultural Experiment Station,
Auburn, Alabama.

Fish production, culture, etc.—No authority to use funds appropriated to Alabama Polytechnic Institute, or to experiment Stations, or for "live-stock investigations" for any such purpose.

Opinion by Assistant Attorney General McCall.

Dear Sir:

This acknowledges receipt of your letter of January 14, 1932.

You state you would like to start some experimental work studying the problems involved in fish production; that one of the major objects of the work would be a study of the possibility of small farmer-built and farmer-owned ponds for the production of fish for farm consumption. You say you have nothing on which to base a plan and on which to give directions to farmers how to build such a dam, and that you have nothing to show him what he might expect in the way of production for his own use.

You call attention to the appropriations for agricultural research and agricultural extension appearing in Section 12 of an Act approved August 25, 1927 (Gen. Acts 1927, p. 447); also to an Act approved September 10, 1927 (Gen. Acts 1927, p. 473) creating sub-agricultural experiment stations and making appropriations therefor; also to an Act of 1911 providing a fund for experimental work known as the "Local experiment fund," specifically stating same is for "live-stock investigations."

You request my opinion as to whether any of these State funds can be used to engage in fish experimentation, fish production, fish culture, or getting up data to show farmers how to build fish dams, etc.

In answer, will say no.

This is not agricultural research, experimentation, or live-stock investigation. Fish culture, production, experimentation and protection is under the Game and Fish Department of Alabama.

Raising fish, or damming up a creek or branch and experimenting with them, is not an agricultural pursuit in any sense of the word. Fish are not "live-stock"—that, is, the Alabama fish are not, or rather it seems never to have heretofore occurred to our law-makers to classify the "finny tribe" along with cows, mules, pigs, goats, sheep, and other such animals, which while still eating and kicking or doing the many other things they are wont to do are ordinarily known as "live-stock." The words "live-stock" are confined in their ordinary acceptation to animals of some kind or another. In my experience with Alabama fish I have never run up on one that looked like an "animal" although I will admit I have had some on my hook at times that pulled like an animal.

While I recognize the great joy and silent exultation that would come to every farmer in Alabama at knowing that backed up behind his own little dam on the creek or branch that flowed down through the pasture, were hundreds of fish, little, big, long and stumpy, big-eyed and little-eyed, anxiously awaiting the dangling of a hook with a wiggly-worm wherewith they would be afforded an opportunity to flap about in the family frying pan and serve a palate lately victimized by depression, I regret exceedingly my inability to locate a statute applicable to Auburn which would suggest the fruition of the splendid plan.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 3, 1932

Hon. S. R. Butler,
State Tax Commissioner,
State Tax Commission,
CAPITOL

License—chauffeurs—age limit—penalties.

Opinion by Assistant Attorney General McCall.

Dear Sir:

This acknowledges receipt of letter from your department signed by Mr. Gamble, dated December 11, 1931. You state there are persons in Alabama between the ages of 16 and 18 years who are operating in this State motor vehicles put to public use.

You call attention to Revenue Act No. 290 of 1923 (Gen. Acts, 1923, p. 285 et seq); also Section 6268, Code of Alabama 1923.

You request my opinion:

"Is it lawful to issue a chauffeur's license to any person under 18 years of age?"

In answer will say no.

Your attention is invited to the fact that Sections 3329, 3330 and 6268, Code of Alabama, 1923, were repealed by Sections 197, 198 and 199 of an Act approved August 23, 1927, known as "The Alabama Highway Code." Section 6268, Code, which is now Section 199, Highway Act, 1927 (Acts 1927, p. 401) was originally part of Act approved April 22, 1911 (Sec. 22, Acts 1911, p. 643). Section 23, of that same Act provided for a chauffeur's license and prohibited issuance of same to persons under 18 years of age. The same age limit was carried into amendatory Act of 1919 (Acts 1919, p. 1002) and into the Section as re-written in 1923 (Acts 1923, Sec. 25, p. 292).

The status of the law at present is therefore as follows:

Under Section 197, Highway Act, it is unlawful for any person under the age of 12 years to operate a motor vehicle over the public highways of this State.

Under Section 198, Highway Act, it is unlawful for the owner or person in charge of a motor vehicle to permit any person under twelve years of age to operate such vehicle on the public highways of this State.

Under Section 199, Highway Act, no minor under sixteen years of age may operate a motor vehicle on the public highways of the State unless accompanied by an adult person.

A "chauffeur" for license purposes is defined in Section 9 of Act No. 290 (Acts 1923, p. 285) as:

> "Section 9. "Chauffeur." An operator who directly or indirectly receives compensation for operating a motor vehicle on the public highways. This definition shall not be deemed to include manufacturer's agents, proprietors of garages, and dealers, salesmen, mechanics or demonstrators of motor vehicles when driving vehicles in any such capacity."

All persons coming within the definition and not exempted by its provisions are subject to such license.

However, by Section 25 of the same Act a chauffeur's license shall not be issued to any person under 18 years of age.

Therefore, where the operator of a motor vehicle is a chauffeur within Section 9 of said Act of 1927, he must be 18 years of age or over, and must have a chauffeur's license.

A chauffeur's license is not applicable to the owner of a motor vehicle for private use or any member of his family or other person authorized by him and otherwise qualified under the provisions of the Act of 1927 (Sec. 25, Act 1927, p. 293).

Under Sec. 28, Act 1911, as amended by Section 28, Act approved September 30, 1919 (Gen. Acts, 1919, pp. 1004, 1005), it is provided:

> "Any person violating any of the provisions of any section of this Act for which violation no punishment has been specified, shall be guilty of a misdemeanor, punishable by fine of not exceeding twenty-five dollars for the first offense and not in excess of five hundred dollars for any subsequent offense."

Where a person is over the age limit and is subject to a chauffeur's license and has not obtained one, Section 5424, Code of Alabama, would seem to apply.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

NOTE—For minimum age limit operators common carrier motor vehicles under public service commission see Act 1931.

February 4, 1932.

Hon. Pete B. Jarman, Jr.
Secretary of State,
CAPITOL

No authority to refund permit fee erroneously paid Secretary of State in 1930.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you enclose letter of the Fidelity Union Life Insurance Company of Dallas, Texas, to the State Tax Commission, in which is stated the following:

"On or about March 19, 1930, the Fidelity Union Life Insurance Company of Dallas, Texas filed an application with the Secretary of State of the State of Alabama for the obtaining of a foreign corporation permit to do business in your State for the year 1930. We likewise forwarded the Company's check in the sum of $5.00 in payment of this permit, inasmuch as no capital whatever was employed or was contemplated to be employed in the State of Alabama for the current year. Moreover, there had not been any capital employed by this company in the State of Alabama during any previous year.

"Your Secretary of State advised this Company on the date of March 21st that permit No. 754F was issued to this Company on January 22, 1930. Accordingly, the application and check of $5.00, which was forwarded to your Secretary of State on March 19, 1930, were returned unused.

"Immediately thereafter it was revealed to us upon investigation that the officer of this Company who prepared and forwarded the certificate of application in January of 1930 erroneously stated that the amount of capital employed in the State of Alabama was $200,000.00. Upon the assumption that such was a correct statement, the Company's check was issued in favor of your Secretary of State for the sum of $100.00. Immediately when the matter was brought to my attention in March, the writer discovered the error of the former application and sought promptly to correct the error and obtain a refund of the sum of $95.00, which was erroneously paid.

"The purpose of this communication in duplicate is to advise your office of the full facts and to earnestly request your consideration of our repeated efforts to obtain a refund of the amount due the Company. Our correspondence file on this case will reveal that we have written scores of letters to various officers in your State, certifying to the facts herein furnished. Our representative in your State, Mr. Hugh Franklin, Jr., of the Franklin-Patton Agency, 2111 First Ave-

nue N., Birmingham, Alabama, is fully cognizent of all the information herein set out, and will gladly certify to the correctness of these facts.

"We have been informed that under the provision of an enactment of your General Legislature in the regular session of 1931, where any taxpayer has erroneously paid an amount in excess of the amount due, the State Auditor is authorized to draw a warrant on the State Treasurer in favor of such taxpayer and the State Treasurer is authorized to pay such warrant for the amount of such over payment or erroneous payment. It has been suggested to us that this position should be directed to you and the full facts certified therein. We shall be deeply grateful for your prompt and full consideration of this matter and for your authorization of the State Auditor to refund us the proper amount."

You ask my opinion in the premises.

In reply I advise that I know of no law authorizing a refund of such a tax. The tax was paid to the Secretary of State in 1930. There was no law authorizing such a refund even by the State Tax Commission at that time. The Act of 1931, General Acts 1931, p. 527, to which reference is made, provides: "That where any taxpayer in the payment of taxes, which are paid directly to the State Tax Commission," through mistake, etc. You will note that the Act applies only to taxes paid directly to the State Tax Commission. Therefore it cannot apply to taxes paid other State agencies.

It is doubtful if a retroactive effect can be given to that statute in any event, but that point I do not now decide.

It is my opinion that there is no authority of law for such a refund, except by relief bill passed by the Legislature.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 4, 1932

Hon. H. W. Owens,
Judge of Probate,
Abbeville, Henry County, Alabama.

Elections—Election precincts districts, voting places.

Opinion by Assistant Attorney General McCall.

Dear Sir:

This acknowledges yours of January 13, 1932. You request my opinion:

"1. Is Article 6, containing sections 425 to 436, both inclusive, of Chapter 19 of the Code of Alabama, of 1923, the law governing division of counties into election precincts and establishing voting places therein?

"2. In the event your answer to query No. 1 hereof is in the affirmative, are governing bodies whether styled Commissioner's Court or otherwise, of counties authorized to establish more than one voting place in election precincts which do not have more than 300 legal voters?

"3. In the event your answer is in the affirmative to query No. 1, and in the negative to query No. 2, then should counties which have more than one voting place in precincts containing not more than 300 legal voters, abolish such excessive voting places?"

In answer to your first question will say yes. The Article of the Code provides that when at any general or primary election more than three hundred legal votes are cast in a voting precinct or district it must be immediately sub-divided into election districts, and no election district shall contain more than three hundred legal voters.—Section 427, 428, Code of Alabama, 1923.

There cannot legally be more than one voting place in an election district.—Section 431, Code of Alabama, 1923.

In answer to your third question will say yes.—Article 6, Chapter 19, Code of Alabama, 1923.

Your particular attention is called to the attached opinion of September 30, 1930, to the Judge of Probate, Elmore County.—Opinions Attorney General, 1928, 1930, p. 1004.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 9, 1932

Mr. John C. Curry,
Chief Clerk,
Ad Valorem Tax Department,
State Tax Commission,
CAPITOL.

Masonic Temple Association which furnishes office to its attorney for his use in the general practice of law, and accepts no rent therefor, does not subject such Association to taxes in view of Section 3022, Code of Alabama, 1923.

Opinion by the Attorney General.

Dear Sir:

I have your letter of February 9th, in which you state the Masonic Temple Association of Selma, Alabama, owns a building which is used by all Lodges of Selma exclusively for Masonic purposes. You state that the Masonic Temple Association contemplates, for convenience, furnishing its attorney and the attorneys of the affiliated lodges with offices in this building, and that said attorney will also from such office conduct a general practice of law.

I am of the opinion that such action on the part of the Masonic Temple Association would not subject such Association to taxes on the building on account of such action.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 9, 1932

Hon. S. D. McGee,
Tax Collector,
Tuscaloosa, Alabama.

Taxes—Cannot be paid by warrants.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of December 23, 1931 in which you ask whether or not you can accept State Warrants in payment of taxes.

It is my opinion that you cannot, and I refer you to an opinion of this office found in Biennial Report of Attorney General, 1920-1922, page 311. I also refer you to the following cases:

Shelton v. Blount County, 81 So. 562, 564;
Burke v. Armstrong, 52 Ala. 48.

H. N. 5 of the Shelton Case, supra, is as follows: "A tax debtor can never be allowed to set off against his taxes a claim against the state or municipality."

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 9, 1932

Hon. Bob J. Slay,
Sheriff, Chambers County,
LaFayette, Alabama.

1. Cities of Alabama are prohibited by Section 2171 of the Code of Alabama from charging a farmer or any one engaged in the production of farm products of whatever nature, any license or fee, for the sale or other disposition of the farm products produced by him at any place.

The orange is a farm product within the meaning of this Section of the Code of Alabama.

2. Schedule 80 of Section 361 of the General Revenue Act, 1919, which levies a State and County license upon certain peddlers, exempts from its operation:

1st. Peddlers of fish,
2nd. Peddlers of oysters,
3rd. Peddlers of game,
4th. Peddlers of fresh meat,
5th. Peddlers of fruits and
6th. Peddlers of "all farm products raised by the seller," no matter in what state of the union raised.

3. Schedule 56 of Section 361 of the General Revenue Act, 1919, which undertakes to levy a state and county license upon peddlers of fruit from a wagon, provided such license shall not be required of any person selling fruit grown by him in this State, is void **in toto**, since it is in contravention of the commerce clause of the Constitution of the United States.

4. The opinion of this office to the State Tax Commission of date June 7th, 1929 (Reports of Attorney General, 1928-1930, page 457, et seq.) upholding the validity of Schedule 56 of Section 361 of the Revenue Act, 1919, overruled and withdrawn.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of November 18th to hand. You write as follows:

"I wish your opinion upon the following matter:

"Is a man required to take out extra license to peddle fruit brought from his own orange grove in Florida? The license inspector has cited him for license. This man has all necessary license in Florida. He has also paid the $50.00 city license."

From what you have written, I presume you mean that John Doe, a citizen of the State of Florida, owns an orange grove in the State of Florida. This fall he loaded a truck with oranges from this grove and brought said oranges to Chambers County, Alabama, and peddled them from his truck in a municipality of said Chambers County and possibly elsewhere in said County.

John Doe, on demand of some officer in said municipality, paid the sum of fifty dollars as license for the privilege of selling said oranges in said City.

The License Inspector of Chambers County made demand on him for State and County license for peddling said oranges in Chambers County.

John Doe had paid all licenses required of him by the laws of the State of Florida for the privilege of peddling oranges in the State of Florida.

Upon the facts as stated, you ask my opinion as to the liability of said John Doe for State and County license for peddling said oranges in Chambers County.

This request is made by you, as Sheriff of Chambers County, as provided by Section 870 of the Code of Alabama, for the reason than the advice sought by you is necessary to the present performance of your official duty in enforcing the criminal law of the State of Alabama, in regard to peddling fruit in your County, without having obtained a State and County license for the exercise of the privilege.

In order that you may clearly understand your duty, as Sheriff, in the premises, will say that, under the facts stated, John Doe was not, and is not, due any State or County license as fruit peddler in the State of Alabama; nor was he due any city license for the privilege of selling said oranges in said municipality. You should protect the said John Doe in the exercise of his legal rights in peddling said oranges and not arrest him therefor. Governments are formed to protect a citizen in the exercise of his legal rights, as well as to exact from him the performance of his legal duties.

The Legislature has very properly recognized the fact that one of the most important articles of diet, for the health of the people, as well as the enjoyment of the people, is fruit; and has so fixed the law as to permit the people to purchase fruit as cheaply as practicable.

While the Legislature preferred, if practicable, to give the farmer of Alabama a preference over the farmers or producers of fruit of other states, in the sale of his produce, the Constitution of the United States very wisely prevented such preference; but, at the same time, the Constitution of the United States gives to the farmer, in the State of Alabama, the same privilege of selling his produce in another state as is given the farmers of such other state of selling his produce therein. If a state wishes to license the privilege of the farmer of another state in selling his produce in such state, it must also license, to the same extent, the privilege of the farmers of such state. No preference can be given as to the sale of the produce or manufactures of any state of the Union.

There are two valid statutes of Alabama bearing upon the question of peddling fruit in Alabama, besides an attempt to make a statute upon the subject, void because in contravention of the commerce clause of the Constitution of the United States, as will hereafter be shown. One of these valid statutes is Section 2171 of the Code of Alabama, and concerns the limitation of the powers given a municipality. This Section reads as follows:

> "2171. No license for farm products charged to farmers.—It shall be unlawful for any municipality to charge the farmers or others engaged in the production of farm products of whatever nature, any license or fee, for the sale or other disposition of said articles produced by them, at any place."

This Section clearly prohibited said municipality, or any other municipality in the State of Alabama, from charging the said John Doe any license or fee for the privilege of selling said oranges in said municipality. If any such license money was demanded and collected by said municipality, it was done in defiance of said Section 2171 of the Code of Alabama, and was unlawfully collected.

The other valid statute is Schedule 80 of Section 361 of the General Revenue Act, 1919. This Schedule reads as follows:

> "Peddlers of Medicine.—Peddlers of medicine or other articles of like character, one hundred dollars for each county in which they peddle, fifty dollars of said amount to be paid to the county, said fifty dollars being the county license. Peddlers of merchandise other than medicine, fifteen dollars for each county in which they peddle. Peddlers, except peddlers of medicine, who are otherwise licensed and except peddlers of tinware, woodenware, stone or clay hollowware, tanners who manufacture leather goods, when traveling in vehicles shall pay thirty-five dollars for each county in which they peddle.

Provided that no peddler's license shall be required of Union and Confederate Veterans of the Civil War, nor of persons totally blind, nor of persons who are physically disabled to do manual labor, who shall obtain a certificate from the County Health Officer as to such disability, nor shall this schedule be construed to require a license of peddlers of fish, oysters, game, fresh meats, fruits and all farm products raised by the seller."

It will be noticed that the last clause of this Section reads as follows:

"Nor shall this schedule be construed to require a license of peddlers of fish, oysters, game, fresh meats, fruits and all farm products raised by the seller."

By this provision in said Section 80, no State or County license is levied by said Section, first, on peddlers of "fish"; second, on peddlers of "oysters"; third, on peddlers of "game"; fourth, on the peddlers of "fresh meat"; fifth, on the peddlers of "fruits"; and sixth, on the peddlers of "all farm products raised by the seller."—Opinion of Attorney General to Probate Judge of Chilton County, of date February 1st, 1929 (Report Attorney General, 1928-1930, page 162, et seq).

There is no State or County license required of John Doe under the facts stated. In my opinion, fish, oysters, game, fresh meats and fruits, and "all farm products raised by the seller" are each specifically exempted from the operation of said Schedule 80 of Section 361 of Revenue Act. 1919.

Farm products not raised by the seller and not falling within either of the other exemptions named in said Schedule 80, falls under the provisions of Schedule 80, as well as the things specifically named as falling within said Section.

Schedule 56 of Section 361 of the Revenue Act, 1919, reads as follows:

"For each person engaged in the business of peddling fruit from a wagon, fifteen dollars for each wagon; provided this license shall not be required of any person selling fruit grown by him in this state."

It is clear that the proviso of this Schedule is in contravention of the Constitution of the United States. The Supreme Court of Alabama, in the case of Vines vs. The State of Alabama, 67 Ala. 75, a case involving a similar peddler's license statute in the Code of 1876, had this to say:

"More recent adjudications of the Supreme Court of the United States to whose expositions of the National Constitution all judicial tribunals must yield obedience, have placed it beyond controversy that a state cannot either in the exercise of its taxing power, or of its police powers, discriminate in favor of its own products and manu-

factures and against the manufacturers and products of other states. The case of Welton vs. State of Missouri, 91 U. S. 275, is not distinguished from this case."

Further on, in the same opinion, speaking of the opinion of the United States Supreme Court in said case from Missouri, in which the Supreme Court of Missouri had upheld a statute similar to the one we are now considering, our Supreme Court, speaking through Brickell, C. J., said:

"The judgment was reversed in the Supreme Court of the United States and the statute declared violative of the clause of the Constitution conferring on Congress the power to regulate commerce with foreign nations. The power of a state to impose a law by way of license on pursuits and occupations within its limits was admitted. But it was said, 'like all other powers, must be exercised in subordination to the requirements of the Federal Constitution. Where the business or occupation consists in the sale of goods, the license tax required for its pursuit is, in effect, a tax upon the goods themselves. If such a tax be within the powers of a state to levy, it matters not whether it be raised directly from the goods or indirectly through the license to the dealer; but if such tax conflicts with any power vested in Congress by the Constitution of the United States, it will not be any the less invalid because enforced through the form of a personal license."

It may be contended that the proviso in said Schedule 56 may be declared unconstitutional and leave the rest of said Schedule as valid, since such part so left makes complete sense in itself; thus levying a license on all peddlers of fruit whether raised by the seller in the state or out of the state.

This question was fully answered in said case of Vines vs. the State of Alabama. In that case our Supreme Court said:

"It has been, however, suggested that it is only the exemption of State products and manufactures which offends the national constitution, and this may be regarded as stricken out, leaving the general words of the statute of full force, imposing a license upon all peddlers, and not distinguishing between them, because of the origin of the products or manufactures in which they deal. A part, or a section of a statute may offend the constitution, State or National, and if there are other parts or sections, separable from, not dependent upon it, capable of full execution without it, their validity is not affected.—Ex parte Pollard, 40 Ala. 77. But, when the parts of a statute are so materially connected and dependent as to justify the belief that the Legislature intended them as a whole; and there is an absence of good reason for the belief, that the Legislature intended, if a part was incapable of taking effect, the residue should be preserved, the whole statute must fail. The statute we are considering speaks as an entirety in its purposes and objects, and it is incapable

of separation and severance without violation of the legislative will. A construction of the statute which would subject to license a peddler of the products and manufactures of the State, would impose a tax, where the legislature has not made the imposition, but specially relieved and exempted from it. That would be legislation, not construction."

The fact that John Doe has paid all license required of him for selling fruit in Florida is immaterial to the answer of the question asked by you and need not be considered by you for any purpose.

The opinion of the Attorney General to the State Tax Commission of date June 7th, 1929 (Report Attorney General 1928-1930, page 451, et seq.) being in conflict with the foregoing, as well as in conflict with the opinions cited in support thereof, is hereby overruled and withdrawn.

I have written thus at length for the reason of the importance of the matter inquired about by you, and the erroneous views frequently entertained on the subject.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 9, 1932

State Tax Commission,
CAPITOL.

Attention: Mr. J. R. Gamble.

Trucks owned by resident of Tennessee using the public roads of Alabama in interstate commerce liable for truck license under Sections set out.

Opinion by Assistant Attorney General Moore.

Gentlemen:

I have your letter of January 13, 1932, in which you state:

"The following is a copy of a letter which we have just received from our License Inspector, L. G. Collier, of Huntsville, Alabama, Madison County;

January 8, 1932

" 'Gentlemen:

'The Huntland Milling Company, Lewisburg, Tenn., send a salesman to Alabama taking orders for meal and flour, the orders are

sent into home office and if accepted, the meal and flour is sent to buyer in Alabama by truck. These trucks make regular trips weekly. I have failed to convict drivers of trucks for not having Alabama tags. The court ruling that this was Interstate Commerce. I am familiar with opinions Biennial Reports, but none of these seem to fit the exact question in this case, and I would like to have an opinion on above facts. Prices quoted on the meal and flour sold by this company are so much delivered or some less not delivered. Would this difference in price be construed to mean the truck delivering was for hire? I have trouble with Tennessee trucks and I will have until I am able through the court to get convictions. Will the Tax Commission kindly get this opinion for me at once? Case in Court in February dependent on a favorable opinion.'

"While the Huntland Milling Company of Lewisburg, Tenn., through its salesmen who take orders in Alabama for meal and flour and such orders are sent into the home office and if accepted, the meal and flour is shipped to the buyers in Alabama by truck may be, as far as the sale is concerned, engaged in interstate commerce; still, it is our opinion that the trucks delivering this meal and flour are not relieved of the liability of buying an Alabama license tag.

"The Tennessee non-resident motor vehicle license law requires commercial vehicles operated for hire over the state line to secure Tennessee State license tags, except large trucks and moving vans may make not more than four trips a year without taking out Tennessee license. All other trucks, in the business of owner, or otherwise, must secure Tennessee license, except any farmer operating his own truck, bringing into the State of Tennessee his own produce to sell or to haul home supplies he has bought and any merchant who comes into the State to purchase goods for sale in his own store.

"We, therefore, request your opinion as to whether the Huntland Milling Company of Lewisburg, Tenn., delivering its merchandise into the State of Alabama, under conditions mentioned in Mr. Collier's letter, is liable for Alabama license tag for its trucks."

In reply I beg to advise that it is my opinion that the Huntland Milling Company is liable for truck license under the conditions outlined in your letter. The question of interstate commerce is not at all applicable. The privilege is for the use of the public roads and if the trucks use the public roads it is immaterial the purpose for which such trucks are used.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 9, 1932

Hon. O. L. Shelnutt,
Tax Collector,
LaFayette, Chambers County, Alabama.

Public Funds—Tax Collector's liability for accounting for.

Opinion by Assistant Attorney General McCall.

Dear Sir:

This acknowledges receipt of your request of October 23, 1931. The same reads as follows:

"I have begun my duties as Tax Collector of Chambers County and I have been trying to get the bank to make me a depository bond as law requires me to obtain but the bank doesn't want to put themselves to all this trouble in order to get my depository account. I have opened up an account with my bank here but only for making proper distribution of the funds collected. In other words when I make a deposit I at the same time distribute this amount to county treasurer and treasurer of school fund and get their receipts for such distribution and instead of depositing the State's part with the bank I get exchange on First National Bank, Birmingham, Ala., and forward this exchange together with proper report to State Treasurer."

In answer will say:

"The bond of a tax collector is relieved from liability only on such part of his collections as have actually reached the State Treasurer or the State duly authorized depository.

"Where a collector buys exchange or gets a cashier's check—payable to the State Treasurer—and the bank fails before realization of the amount in question is had, this is preferred claim to the amount of the check or exchange—against the assets of the bank—but the bond of the Tax Collector guarantees that the funds collected by the collector and belonging to the State, County or Schools will safely surely reach the treasureries of each interest mentioned, and only when this full accomplishment is had does the liability cease."

You are doubtless familiar with the provisions of Act No. 140-3-144-Teasley, Section one of which reads as follows:

"Section 1. That any draft or cashier's check issued and drawn against actual existing value by any bank or trust company prior to its failure or closing and given in payment of clearings and any money paid in the usual course of business to any bank or trust com-

pany in payment of a draft for the bona fide transfer of funds shall be a preferred claim against the assets of the bank or trust company, irrespective of whether the fund representing such item or items can be traced and identified as part of such assets or has been intermingled with or converted into other assets of such failed bank or trust company."

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 10, 1932

Hon. D. F. Green,
Deputy Superintendent of Banks,
CAPITOL.

The State Superintendent of Banks, in the State of Alabama, has authority under Section 6306 of the 1923 Code of Alabama, where a bank has come into his hands as such Superintendent, to borrow money and pledge the assets of such bank as security, where, in good faith, it is his judgment that such course is necessary to conserve its assets and business.

Section 6307 of the 1923 Code of Alabama has no bearing on the matter of inquiry.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Receipt of your letter of February 8, 1932, is acknowledged. You write as follows:

On January 30th, 1932, Congress passed an Act creating the Reconstruction Finance Corporation, and Section 5 of the Act provides, in part, that the said Reconstruction Finance Corporation might lend money to certain organizations and corporations "including loans secured by the assets of any bank that is closed, or in the process of liquidation, to aid in the reorganization or liquidation of such banks, upon the application of the Receiver, or Liquidating Agent of such bank and any recevier of any national bank is hereby authorized to contract for such loans and to pledge any assets of the bank for securing the same."

A number of State banks in the hands of the State Superintendent of Banks, for liquidation have loans secured by mortgages on real estate, which appear to be ample in anything like ordinary times, but right now to foreclose these mortgages and sell the real estate for anything like its reasonable value is impossible, and so it may be necessary for these

assets to be carried for a time and give the mortgagors time to re-finance and pay the mortgages when they shall have made additional crops. In addition many of these banks own considerable real estate, which cannot now be sold for cash for anything like its value, and to sacrifice these assets would, in your opinion, be a great detriment to the depositors and creditors of those banks. To try to liquidate these frozen assets would, at this time, create confusion and suffering, which would be inexcusable.

In view of the facts as stated, you ask my opinion whether under Section 6306 and Section 6307 of the 1923 Code of Alabama, the Superintendent of Banks, by the approval of the Court, would have authority to borrow money to pay some dividends to the creditors of these closed banks and to pledge the assets, or part of the assets, to Finance Corporation as security therefor.

Section 6306 of the 1923 Code of Alabama reads as follows:

> "Upon taking possession of any of the property and business of any bank or individual banker, the superintendent may collect moneys due to such corporation or individual banker and do such other acts as are necessary to conserve its assets and business, and shall proceed to liquidate the affairs thereof as hereinafter provided. The superintendent shall collect all debts due and claims belonging to the bank."

In reply will say that, in my opinion, under the facts stated, if, in the opinion of the Superintendent of Banks, after having taken possession of the property and business of any bank, it is necessary to conserve the assets and business of such bank, to borrow money by pledging the assets of such bank as security, Section 6306 is authority for such a course. Of course, all such authority must be exercised, in good faith, for the conservation of the assets and business of such bank. In my opinion, the borrowing of money, in good faith, in promotion of the purposes set out in your letter, would, as nearly as anyone could judge, be necessary to conserve its assets and business.

Of course, this opinion goes only to your authority as State Superintendent of Banks to borrow money. The question of making a loan, on the showing made by you, is with the Reconstruction Finance Corporation.

I am unable to see that Section 6307 of the Code of Alabama has any bearing on the matter inquired about.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 10, 1932

Hon. Landon G. Smith, Director,
State Highway Department,
CAPITOL.

Trucks, trailers, semi-trailers, and motor vehicles.

Opinion by Assistant Attorney General McCall.

Dear Sir:

This acknowledges receipt of your letter of February 9, 1932. You request my opinion:

"1. What is a semi-trailer?

"2. What is a motor truck?

"3. When it is evident that the attachment to a motor truck is a semi-trailer, what load may be carried on truck and trailer?

"4. As a general rule in what instance would the attachment ordinarily demonstrated a semi-trailer become part and parcel of the motor vehicle, and subject to one license, ie, a truck license, if at all?"

In answer to your first question, will state the following as a general definition of a semi-trailer:

Semi-trailer—Every vehicle without motive power designed for being drawn by and for so being used in conjunction with a motor vehicle that some part of its own weight and that of its own load rests upon or is carried by another vehicle.

In answer to your second question, will state the following as a general definition of a motor truck:

Motor truck—A motor vehicle so designed, constructed or reconstructed primarily to be used to carry a load of goods, wares or merchandise of some character upon its own chassis.

In answer to your third and fourth questions, will state the following:

The **minimum** license for a motor truck is determined by the manufacturer's rating of its carrying capacity.

The right to carry a certain load upon a motor truck is determined by the license it carries.

In every instance where the owner of a motor truck desires to carry thereupon a load in excess of what may be carried under the minimum license therefor, he must obtain a license for that truck computed upon the basis of the load carried.

Where one obtains a semi-trailor license, for a semi-trailer attached to a motor truck such semi-trailer license does not permit the truck-owner to place any load on the truck in excess of the maximum previously allowed him by the truck license, but he may carry half as much additional load on the semi-trailer as he may carry on the truck.

The reason for this is that the truck license is computed on the basis of load carried, and the semi-trailer license is determined by the amount of the truck license, hence the semi-trailer license is indirectly determined by the truck load, hence the semi-trailer license being one-half the truck license, allows a load on the semi-trailer of one-half as much as is lalowed on the truck.

Whether an attachment is a semi-trailer or a part of the vehicle to which it is attached is largely a question of fact. Of course, if it is evident that it is a permanent attachment or fixture, it is part and parcel of the truck and the whole should be treated as one unit, subject only to a truck license computed on the basis of the load carried. No semi-trailer license is required in such instance. If it is evident that the arrangement or joining is of such nature that the same may be and is intended to be easily separated and attached to another vehicle, and that when so separated the motor vehicle without further design or construction or addition thereto is capable of carrying a load of some character of goods, wares or merchandise upon itself, then the two vehicles should be treated separately for license purposes, and a truck and semi-trailer license should be required.

If when what is ordinarily termed a semi-trailer is detached from the motor vehicle that pulls it, that motor vehicle in its present condition, without further construction thereon, is incapable of use for carrying a load or commodities such as goods, wares and merchandise of some general or particular description, then it is evident that the vehicle which is denominated a semi-trailer is not a semi-trailer in fact and the motor vehicle denominated a motor truck is not a motor truck in fact, but that the two vehicles together constitute and should be treated as one unit, i. e., a motor truck, subject only to a truck license as a whole which license is computed upon the basis of the load carried.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 11, 1932

Mrs. L. E. Christian,
Tax Assessor, Shelby Co.,
Columbiana, Alabama.

Tax Assessor making assessments for incorporated towns.

Opinion by Assistant Attorney General Haynes.

Dear Mrs. Christian:

I have your letter of February 10, 1932 addressed to Mr. Jno. J. Haynes, assistant attorney general, in which you request my opinion as follows:

"Am I, as Tax Assessor of Shelby County, compelled to make assessments for incorporated towns in the county?"

It is my opinion that under proper authority you are so required. I call your attention to Section 3095, Code of Alabama, 1923, which is as follows:

"3095. Provisions of this chapter applicable to municipal taxes. —Any municipal corporation of this state, may, by ordinance duly adopted, provide for the assessment, equalization, and collection of taxes due such municipality by the officers and boards provided in this chapter, and all the machinery herein provided for the assessment, equalization and collection of state and county taxes, the enforcement of such collection, the sale of property for the collection of taxes and the redemption from such sales, shall be applicable to the assessment and collection of such municipal taxes, the sale of property for the collection of such municipal taxes, and the redemption from such sales, and the assessor and collector shall receive such compensation as may be fixed by the governing body of such municipality, not to exceed one-half of one per cent for assessing, and one-half of one per cent for collecting."

You will note this section says, among other things, that the assessor and the collector have this duty imposed only when the town council has, by proper ordinance, placed the same upon them. This cannot be done by mere request, but to authorize such assessment or collection there must be a sanctity of an ordinance duly passed by the city or town council and until this is done, there is no power conferred.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 11, 1932

Hon. Joseph B. Crow,
Tax Collector, Mobile County,
Mobile, Alabama.

Tax Collector may accept part payment of taxes due on personal property provided he does not release lien or right of the State as to the entire amount due to all the property included in the assessment.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of January 6, 1932, in which you state:

"Please let me have your opinion on the following matter:

"The Tax Assessor assessed the W. G. Patterson, Inc., a Company doing a tobacco and drug business for 1931 tax. This concern leased several places and put in the fixtures and stocks, but failed or refused to make the 1931 tax return and were penilized 10% by the Assessor.

"Since the assessment was made this concern has gone out of business, turning over the equipment and stock to the several parties from whom they lease the several buildings. It now appears that all of the parties want to pay the taxes with the exception of one party, which naturally has tied the matter up.

"The writer understands that he is to levy on the stock and fixtures for the taxes, but the question that has arisen is, the parties that want to pay, do not want their places listed and included for the amount of the taxes, and insist that the only thing that I can attach and sell is that property which is not willing to pay his part. Please advise me if I am within my rights in attaching all of the several stores and selling for the amount of the taxes.

"Please give this your earliest attention, as my hands have been tied and I am anxious to close the matter out."

In reply thereto I beg to advise that Section 3077, Code of 1923, provides that whenever the Tax Collector has good reason to believe that any person, owing taxes is closing out or going out of business or disposing of substantially all his personal property, it is his duty to proceed to the collection of such taxes at once. Section 3078 makes the Tax Collector personally liable when he fails to collect such tax. Therefore, if by your failure to proceed against the firm of W. G. Patterson, Inc., at the time they went out of business, a loss of taxes should result, you would be personally liable.

However, under your facts it seems that the taxes can still be collected. I see no objection to your allowing the several parties who desire to pay the taxes on the portion of the stock and equipment acquired by them from doing so, provided you do not release the lien of the State against the whole. You can then make levy on that portion of the property in the case where the present owner refuses to pay. If this is sufficient to satisfy the balance due, no other levy will be necessary. If insufficient, you will have to make levy against the other portion in order to protect yourself from personal liability. In no case can you accept

a portion of the taxes on the personal property and release the lien of the State as to the whole.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 13, 1932

Hon. Roy O. Hill,
Clerk, Circuit Court, Houston County,
Dothan, Alabama.

Circuit Clerk without authority to require State trial tax in a court cost bill rendered a Federal Reserve Bank; such a tax is prohibited by Section 531, p. 363, United States Code Annotated.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I beg to acknowledge receipt of your several letters of recent date, in which you inquire relative to the right of the State to require a State trial tax, as an item of cost, of the Federal Reserve Bank of Atlanta, Ga. In other words, the Federal Reserve Bank of Atlanta, Ga., instituted suit in your Court against the Toggery Shop, which defendant was later thrown into bankruptcy. You rendered a cost bill to the Federal Reserve Bank, after non-suit had been entered by the Federal Reserve Bank, and one of the items of cost was $3.00, representing the trial tax provided by the laws of this State. So, the question presented is whether or not you, as Clerk, have authority in law to require the Federal Reserve of Atlanta, Ga., to pay this trial tax of $3.00.

Section 1 of an Act of the Legislature of 1931, at page 604, provides:

"Section 1. That a trial tax of Three Dollars be, and the same hereby is, imposed in each case, civil, criminal and equity, which is now pending and which hereafter goes upon the docket of any circuit court in this State, to be taxed and collected as other costs, and when collected to be paid by the clerk or register of such court as follows: one-half thereof into the general funds of the State Treasury, and the other half into the general funds of the County in which the same is collected and for collecting and remitting such tax, the clerk or register may retain 5% commission thereof."

Section 531 of the United States Code Annotated, Title 12, p. 363, provides:

"Section 531. Exemption from Taxation. Federal reserve banks, including the capital stock and surplus therein, and the income de-

rived therefrom shall be exempt from Federal, State, and local taxation, except taxes upon real estate. (Sec. 23, 1913, c. 6, Section 7, 38 Stat. 258, Mar. 3, 1919, c. 101, Section 1, 40 Stat. 1314)."

The first statute quoted is the State statute which imposes the trial tax in each case, civil, criminal and equity. The second statute is the Federal statute providing, in general, that Federal Reserve Banks are exempt from Federal, State and local taxation, except taxes upon real estate.

The State trial tax in Alabama first appeared in Section 4½, p. 284 of the General Revenue Laws of Alabama of 1919. The 1931 State Act is amendatory of the General Revenue Law of 1919. Admittedly, the State statute exists for the purpose of raising revenue. The fact that the 1931 statute diverts half of the $3.00 to the county is immaterial. The Act providing the State trial tax is a revenue raising measure. In my judgment, Section 531 of the United States Code Annotated, prohibits this. This Federal statute very clearly says that Federal Reserve Banks shall be exempt from Federal, State and local taxation, except taxes upon real estate.

In my judgment, you are not authorized in law to require the Federal Reserve Bank to pay the trial tax mentioned in your letter. In my judgment, the State is wholly without authority to require such a tax of this governmental agency.

Section 531, United States Code Annotated, p. 363;
Federal Land Bank of New Orleans v. Crosland, Judge of Probate, 261 U. S. p. 374;
Opinion of Attorney General, June 5, 1929, Vol. 12, (Office Edition);
Opinion of Attorney General, August 7, 1917, (Office Edition);
Opinions of Attorney General, 1918-1920, p. 440;
Opinions of Attorney General, 1928-1930, p. 895;
Owensboro National Bank v. Owensboro, 173 U. S. 604.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 16, 1932.

Hon. G. L. Malone,
Judge of Probate,
Fort Payne, Alabama.

Poll Tax—person discharged from draft not exempt.

Opinion by Assistant Attorney General McCall.

Dear Sir:

This acknowledges receipt of your letter of recent date.

You request my opinion:

"Is a person exempt from poll tax because of discharge from the draft?"

In answer will say no. Such person has not been in the military service of the United States.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 16, 1932

Hon. L. H. Clark, Chairman,
County Board of Registrars,
Florence, Lauderdale Co., Ala.

Registration—"Residence" lost and how again acquired in county.

Opinion by Assistant Attorney General McCall.

Dear Sir:

Reference is made to your letter of January 30, 1932.

You state that a man who was born and reared in your county registered therein several years ago, and thereafter voted therein for some time, that he later left your county, removed to another county, registered in the latter county and voted therein for some time. You further state that the party later registered again in your county, although at the time of his second registration in your county he claimed his residence "out of the county" and has not moved back to your county but he and his family live and work "away from here."

You request my opinion:

"Can this party become a legal voter in this county without moving back and living in the county the required length of time according to the law to establish his citizenship?"

In answer will say no.

A qualified elector, under the laws of this State, is one who has legally registered, paid all poll taxes due, and who, at the time he offers to vote has been a bona fide resident of the State for not less than two

years, the county for not less than twelve months, and the precinct not less than three months.

One who is an actual bona fide resident and qualified elector of a county, who moves away from that county to another county in Alabama, registers and pays poll tax and votes in the latter county, loses his residence in the county from which he has moved. In order to again acquire the right to vote (and therefore be a qualified elector) in the county in which he first lived, registered and voted, he must move back to that county with the intention of making it his actual home; he must again register therein, pay his poll taxes therein, and actually maintain an unchanged bona fide residence therein for at least twelve months before he offers to vote.

If he has not moved back to the county, but maintains his home life elsewhere, his attempt to register in the county is a nullity and if he has been registered without having moved back to the county with intention of making it his home, such registration is unlawful, and his name should be stricken from the registration list after due notice given to him and after opportunity afforded him to appear before the Board and show cause why it should not be done.

The Act of the Board of Registrars in purging the registration list is judicial and not ministerial in nature. The Code provides a method of appeal from its decisions but no person, not a member of the Board, can dictate to it whom it shall and whom it shall not purge from the list.

Of course you understand a person does not have to live in a county twelve months in order to register. (See attached opinion) but he must have lived in the State two years and the county twelve months in order to **vote therein.**

To hold public office one must (unless there is some specific exception in the Act relating to the office) be a qualified elector. Registration alone does not make one a qualified elector. He must have paid all poll taxes due. He must also have been a bona fide resident of the State, County and precinct for the time required by law.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 16, 1932

Mr. F. A. Walker, Chairman,
Russell County Democratic Executive Committee,
Hurtsboro, Alabama.

1. When there is a vacancy in the office of Tax Collector of a County, such vacancy must be filled by appointment of some person by the Governor.

2. When a person is appointed by the Governor to fill a vacancy in the Office of County Tax Collector, such person holds the office for the unexpired term and until his successor is elected and qualified.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of January 21st was duly received. You make the following statement of facts:

"In the last general election the late C. E. Borom was elected to the office of Tax Collector of Russell County. Between the time of his election and the beginning of his new term he was stricken ill and submitted his resignation which was duly accepted by Gov. Miller. Up to date of Mr. Borom's resignation he had made no attempt to qualify or make bond preparatory to assuming the duties of the office and was confined to his bed from his first illness until his death, about six weeks ago.

"After the acceptance of Mr. Borom's resignation, Governor Miller appointed Mr. George Wallace of Girard Tax Collector of Russell County and Mr. Wallace assumed the duties of this office on the first day of the new term. Now, the question has arisen as to whether Mr. Wallace can hold the office the full term by his appointment or whether a Tax Collector will have to be elected in the next general election. The idea seems to prevail here that inasmuch as Mr. Borom never qualified nor assumed the duties of the office, there was no unexpired term, and that the Governor had the authority only to appoint a man to fill the office until the next general election."

As Chairman of the Democratic Executive Committee of Russell County you have been requested to get an opinion from this office (and you ask for your own informatoin) as to whether or not prospective candidates for the office of Tax Collector of Russell County should qualify for the forth-coming primary. Whether, under the law, such office is to be filled for the balance of the current term at the next general election.

In reply will say that I find nothing in the Constitution of the State of Alabama affecting the question of filling a vacancy in the office of Tax Collector of a County. We must, therefore, look to the statutes on the subject for information.

On November 25th, 1868, an Act of the Legislature was approved. This Act was No. 12, (Acts 1868, page 351). So far as affects Tax Collectors this Act reads as follows:

"1. That the Governor be and is hereby authorized to fill any and all vacancies now existing or which may hereafter exist in the office * * * Tax Collectors * * *, except such officers whose ap-

pointments are otherwise provided by law, by appointment of some person to fill such vacancy.

"2. That the person so appointed shall be duly commissioned and shall hold office until the day of the next general election thereafter."

On March 3rd, 1875, Act No. 18, was approved (Acts 1875-1876, page 76 et seq.). Section 9 of this Act reads, so far as affects the question under consideration, as follows:

"Section 9. **Be it further enacted,** That special elections are to be held in the following cases;

"1st. * * 2nd * *, 3rd * *.

"4th. Whenever any vacancy occurs in any State or County office filled by election of the people, not otherwise provided for by the Constitution or laws of Alabama."

When this Act No. 18 was approved March 3rd, 1875, the filling of a vacancy in the Office of Tax Collector was otherwise provided for by said Act No. 12 approved December 25th, 1868. Hence the Act No. 18, approved March 3rd, 1875, did not repeal by implication, or otherwise affect, the provision in the said Act No. 12, providing for the appointment of a Tax Collector.

Each of these Acts was codified, without substantial change, in the Code of 1876, and, of course, with the same meaning, and legislative intent, that each Act had before being codified.

In the codification of said Act No. 12, instead of naming each of the County officers in the Act, said Section 154 of the Code, 1876, says: "Vacancies in all county offices are filled by the Governor, except as otherwise provided;" etc., the meaning being the same.

Both in said Act No. 12 and in Section 154 of the Code, 1876, we find the following: "and they shall hold their offices until the next general election, and until their successors are elected and qualified."

In the Code of 1886 this last provision was changed to read as follows: "and they shall hold their offices for the unexpired terms and until their successors are elected and qualified."

The part of the statute as to appointment remained the same as in the Code, 1876.

In the Code of 1896, "State" officers were added and Section 3061 thereof was made to read: "Vacancies in all State and County offices are filled by appointment of the Governor, except as otherwise provided; the appointees must be commissioned, and they shall hold their offices for the unexpired term and until their successors are elected and qualified."

The law has so remained in the Codes of 1907 and 1923, and still so remains. The power to fill a vacancy in the office of Tax Collector has been in the Governor since November 25th, 1868. From November 25th, 1868, until the Code of 1886 went into effect, the Tax Collector so appointed held "until the day of the next general election." Since the Code of 1886 went into effect, persons appointed Tax Collectors by the Governor to fill vacancies in that office, hold "for the unexpired term and until their successors are elected and qualified."

There is no need to qualify candidates for Tax Collector of the County in the coming primary as no Tax Collector of the County will be elected at the next general election.

It will be noticed that Act No. 12, approved November 28th, 1868, was the first of either line of Acts or Code Sections that we now have on the subject of filling vacancies in the Office of Tax Collector of the County. Its provision for appointment by the Governor has been kept in force ever since by the provision in the subsequent Act of March 3rd, 1875, and Code Sections following said Act: "Not otherwise provided by the Constitution or laws of Alabama."

If there was, or is, a vacancy in the Office of Tax Collector of Russell County, the authority of filling of such vacancy was and is with the Governor.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 17, 1932

Hon. Chas. E. McCall,
Assistant Examiner of Accounts,
CAPITOL.

The Constitution of Alabama is, as far as it goes, the law of the State and no statute can have the effect to defeat any of its provisions.

Opinion by Assistant Attorney General Evans.

Dear Sir:

I have your letter of January 25th, 1932, with copy of letter of January 22nd, 1932, addressed by Mr. H. Wilson of the Brookings Institution, Washington, D. C., to Mr. Charles Dearing, Jefferson Davis Hotel, Montgomery, Alabama. You ask my opinion upon the question propounded in Mr. Wilson's letter. He writes as follows:

"I note that Act 65 of the 1923 laws and Act 201 of the 1931 laws authorize counties with certain populations to extend the time of payment of road and bridge indebtedness, in other words, to refund, and those acts do not carry the words 'within the limits of the Constitution'.

"I should like to know if these laws defeat the debt limitations of the Constitution. The popular-approval-by-elections limitation does not apply to refunding bonds, and the percentage limitation does not apply to refunding obligations authorized at the time of the Constitution.

"Perhaps the Attorney General has ruled upon the matter. Please get an opinion from him through Judge McCall."

In reply will say that the Constitution of the State of Alabama, is the fundamental law of the State in regard to the matter there treated. Act 65 of the 1923 laws nor Act 201 of the 1931 laws can have the effect of defeating the debt limitation of a County as provided by Section 224 of the Constitution of the State of Alabama. The case of Hogan vs. Limestone County, 160 Ala. 544, clearly holds that contracts which carry the indebtedness of a County beyond the limitation provided by Section 224 of the Constitution is void, although payable in County warrants on long time and on certain conditions.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 17, 1932

Hon. Wm. F. Feagin, President,
State Board of Administration,
CAPITOL.

State Board of Administration has no authority to arrest County convict as an escape where such convict has already served the sentence according to transcript forwarded to the State Board of Administration by the Clerk of the Circuit Court of the County, in accordance with Acts of 1927, p. 52.

Opinion by the Attorney General.

Dear Sir:

I have your letter of December 15th, in which you state that on September 10th, 1931, you received from the Sheriff of Walker County one James C. Kirby, who was convicted of the offense of trespassing, in the Circuit Court of Walker County, and that said convict was sentenced to

serve twenty days at hard labor and was fined eighty-one days for costs in the case as per the transcript received by you from the Circuit Clerk of Walker County. You state that the convict worked out his fine and a portion of the costs and paid the balance. You state that this convict was discharged on December 7, 1931. Subsequent to his discharge, you received from the Clerk of the Circuit Court of Walker County a corrected transcript showing there was error on the part of the Clerk of the Circuit Court in making out the transcript forwarded to your Department.

I am aware of the fact that Walker County has entered into a contract with the State Board of Administration to work its county convicts, according to the usual contracts in such cases. Before the State Board of Administration becomes liable to the County or to its officers for costs or net earnings of the convict, the county must first deliver such convict to the State Board of Administration. This convict was delivered to the State Board of Administration to serve a certain sentence which he did serve.

You inquire whether or not the State Board of Administration should treat the said James C. Kirby as an escaped convict and arrest him and require him to serve the sentence according to the corrected transcript.

I am of the opinion that you should not; that you have nothing to do with James C. Kirby since he has already served the sentence according to the original transcript received by you, until he is again, by the proper officers delivered to the Convict Department of the State Board of Administration to serve any other sentence he may have been convicted of.

I am of the opinion that unless such convict is delivered to the Board of Administration by the proper authorities of the County from which he is sentenced, that the State Board of Administration is not liable to the County or to its officers except according to obligations incurred by it under the original contract and that the whereabouts of James C. Kirby is of no concern to you. He was by the State Board of Administration duly accepted, served his sentence according to the transcript forwarded to the State Board of Administration and duly discharged by the State Board of Administration, and that you have no duties pertaining to any county convict until such convict is by the proper authorities duly delivered to the State Board of Administration.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 19, 1932

Hon. E. K. Garrett,
Board of Registrars,
Girard, Russell Co., Ala.

Registration lists—striking of names of persons convicted of conspiracy to violate the National Prohibition Act.

Opinion by Assistant Attorney General McCall.

Dear Sir:

This acknowledges receipt of your letter of February 2, 1932. In it you state that the Board of Registrars of your county has published and served the names to be stricken from the registration list in your county. Included in this list you state are a number of persons who have been convicted in the United States District Court for conspiracy to violate the national prohibition act.

You request my opinion:

1. Should we strike from the list any person who has been convicted for conspiracy to violate the National Prohibition Act and sentenced to more than twelve months in the penitentiary?

2. Should we strike from the list a person who has been convicted for conspiracy to violate the national prohibition act and sentenced to a term in the penitentiary, and the sentence has been suspended and the defendant placed on probation for five years?

3. Should we strike from the list any person who has been convicted for conspiracy to violate the national prohibition act and sentenced to a term in the penitentiary but who was paroled by the Federal Board of Pardons after serving a part of his sentence?

In answer to your first question, will state that **conspiracy to violate the national prohibition act is punishable** by imprisonment in the penitentiary, and, therefore, under Section 364, Code of Alabama, 1923 such person's name should be stricken from the registration list (See Sections 392, 393, Code of Alabama, 1923).

In answer to your second question, where one has been convicted of conspiracy to violate the national prohibition act and sentenced to a term in the penitentiary, and said sentence has been suspended and defendant placed on probation for a period of five years, this does not allow his name to continue on the registration list. His name should be stricken from the registration list. (See Code sections cited above).

In answer to your third question, where one has been convicted of conspiracy to violate the national prohibition act and sentenced to a term in

the penitentiary but has been parolled by the Federal Board of Pardons after serving part of his sentence, such person is not, by virtue of said parole, entitled to have his name continue on the registration list. He must be pardoned and his citizenship, with the right to vote, must be restored to him by the Governor with the approval of the Board of Pardons.—Section 365, Code of Alabama, 1923.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 20, 1932

Hon. R. B. Ford,
Sheriff, Randolph County,
Wedowee, Alabama.

The surrender of the principal on an appearance bond in criminal cases by sureties, the arrest fee and guard fees cannot be made charges against County or State.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of February 3, 1932 in which you request my opinion as follows:

"Am I entitled to arrest and guard fees or either where the bondsmen give me a certified copy of the bond, in cases where the defendant has been released from jail on bond?"

You are not. Section 3384, Code of Alabama, 1923, provides that the sureties on said bond, where they desire to surrender the defendant, must obtain a certified copy of such bond or undertaking and may arrest the principal on such bond and surrender him to the proper authorities. It is true that the sureties may employ you to make the arrest, but if they do, they must pay you for same. You cannot make a charge for such service against the State or County.—Section 3384, supra, is as follows:

"3384. Bail discharged by surrender of principal; may arrest, or authorize arrest, of principal.—Bail may, at any time before a conditional judgment is rendered against them, exonerate themselves by surrendering the defendant on a certified copy of the undertaking at any place in the state, or may authorize another person to arrest him by an indorsement in writing on such copy."

188 Ala. 258; 114 Ala. 29.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 20, 1932

Hon. H. G. Dowling,
County Superintendent of Schools,
Tuscaloosa, Alabama.

Custodian of City School Funds—Payment of Premium on Bond.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of recent date in which you ask the following question:

"Is it legal for a City Board of Education to pay the premium on the bond of the custodian of city school funds?"

It is my opinion that your question should be answered in the affirmative. Section 196 of the Alabama School Code of 1927, provides for the City Treasurer to be custodian of the School Funds of the city. Section 197, supra, requires the City Treasurer to make bond.

These sections do not state that the premium on said bond shall be paid by the treasurer as is the case of the Treasurer of County School funds.

The bonding of those handling school monies is part of the proper administration of the school system and I think under Section 198, supra, the City Board of Education can legally pay the premium on the bond of the Treasurer of City School funds. Section 198, supra, is as follows:

"The City Board of Education is hereby vested with all the powers necessary or proper for the administration and management of the free public schools within such City and adjacent territory to the City which has been annexed as a part of the School District which includes a City having a City Board of Education."

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 20, 1932

Hon. K. J. White,
Circuit Clerk, Clay County,
Ashland, Alabama.

Final Record.—Circuit Court where defendant bound over in preliminary proceeding before Justice of the Peace.

Opinion by Assistant Attorney General McCall.

Dear Sir:

This acknowledges yours of December 9, 1931. You state Mr. "A" is arrested under a warrant issued by a Justice of the Peace for distilling and is placed under a good and sufficient bond for said offense. He is indicted by the Grand Jury for said offense. On the printed form for statement of final record is space for statement concerning writ of arrest, sheriff's return and bond.

You request my opinion:

"Of what does the final record consist?"

I presume that in the matter you mention "A" was arrested on a warrant issued by a Justice of the Peace for distilling (a felony); that he was brought before the Justice of the Peace who held preliminary hearing, bound him over to the grand jury, fixed his bond, and that "A" made bond as required; that the grand jury thereafter indicted "A" for distilling; that "A" was later convicted of the offense in the Circuit Court, and no appeal was taken.

In such case the final record in the circuit court should show the organization of the court, the organization of the grand jury, the indictment, the capias and the bond.

The orders, judgments and decrees entered upon the minutes of the court are part of the record of the causes to which they pertain, and need not be copied into the final record.—Section 10126, Code of Alabama, 1923.

The preliminary proceedings before the Justice of the Peace or other committing magistrate have no place in the final record in the circuit court in such case. The final record of the Circuit Court begins with the organization of the court. The trial has no reference to the action of the Justice of the Peace.

In connection with this opinion see:
Opinions Attorney General, 1928-30, p. 558,
Carmichael vs. Matthews, 134 Ala. 210.

You are doubtless familiar with Section 3278, Code of Alabama, 1923, as amended by Act No. 557, approved July 23, 1931, which reads as follows:

"That Section 3278 of the Code of Alabama, 1923, be and the same is hereby amended to read as follows: 3278. Writ of Arrest Issued by the Clerk, Solicitor or Judge. A writ of arrest must be issued by the clerk forthwith after the finding of the indictment against each defendant who is not in actual custody, or who has not been bailed, or whose undertaking of bail has been declared forfeited, or when an order is made by the judge presiding when the indictment

is returned by the Grand Jury, commanding that writ of arrest issue; or it may be issued without order of court, either in term time or in vacation, by the solicitor of the circuit, or by any circuit judge. But if the defendant is in actual custody, he shall be held by virtue of the indictment, and no writ of arrest need be issued unless it is so ordered by the judge presiding when the indictment is found."

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 24, 1932

Miss Lummie Swindle,
Treasurer, Walker County,
Jasper, Alabama.

1. Solicitor's fees when collected and paid into the county treasury should be credited to the solicitor's fund.

2. After solicitor's salary paid, all residue of solicitor's fund should be placed to the credit of the Fine and Forfeiture Fund of the County.

Opinion by Assistant Attorney General Haynes.

Dear Madam:

I am in receipt of your letter of February 8, 1932, in which you request my opinion as follows:

"1. Should I, as County Treasurer, place all solicitor's fees collected as part of the costs for convictions in the county court in a solicitor's fund?

"2. If I should place all solicitor's fees collected as part of costs for convictions in the county court in the solicitors' fund as provided in section 5512 then, should I pay or place the residue or balance after paying the solicitor of county court his salary, in the fine and forfeiture fund?"

My answer to your first inquiry is in the affirmative. See Section 5512, Code of Alabama, 1923, also Opinions Attorney General, 1918-20, p. 653.

My answer to your second inquiry is in the affirmative. See Section 3669, Code of Alabama, 1923, which is as follows:

"3669. Surplus paid to fine and forfeiture fund.—The surplus money paid into the state and county treasuries arising from the so-

licitor's fees after the solicitors and their assistants have respectively been paid the amounts allowed them by law, shall be paid into the fine and forfeiture fund of the respective counties in direct proportion to the amount received from the convictions respectively."

Opinions Attorney General, 1918-20, p. 452.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 25, 1932.

Hon. B. Cooper,
County Treasurer,
Hamilton, Marion County, Alabama.

1. It is the County's duty, when a person is found within its boundary injured and with no means to take care of himself, to see that he has proper medical attention.

2. It is the County's duty, where a person is arrested wounded and in need of medical attention and placed in the jail, to see that he receives such attention.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of January 14, 1932, in which you request my opinion as follows:

"I would like to have your decision on the following questions. I have a warrant issued to The Gilmore Sanitarium for hospital service to Joseph Crisp.

"1. This man Joseph Crisp was an ex-service man who was traveling through the county afoot. He, Joseph Crisp, lay down in the middle of a private road which led into the Bankhead Highway and went to sleep. While there in the grass and unseen by a party was run over by an automobile breaking his arm and leg and other injuries. (This man Joseph Crisp was without money, relatives or friends). The Sheriff was called and this man was carried to the Gilmore Sanitarium where he was given medical aid and later was transferred to the U. S. Veteran's Hospital at Memphis, Tenn. This man is not able to pay this bill and has no people to pay it for him. Can I legally pay it out of the funds of Marion County on this Warrant No. 10810 issued by an order of the County Commissioner's Court, for the sum of $55.25.

"2. Is the County liable for hospital services rendered to prisoners while in jail when the difficulty was brought on before the parties were put under arrest? The arrest being made immediately after the difficulty."

Answering your first inquiry, I call your attention to Section 1201, Code of Alabama, 1923, which is as follows:

"1201. Appropriation for sick and wounded authorized—The board of revenue or court of county commissioners of any county in this state having a population of over twenty-five thousand people may make appropriation out of their respective county treasury to aid in maintaining and taking care of sick and wounded persons who are unable to provide for themselves in any hospital maintained in their respective counties exclusively for the care of the sick and wounded."

It is my opinion you would be authorized, under the section above quoted, to pay the warrant if it were duly passed by your Commissioner's Court or Board of Revenue, as this section was pased by the Legislature to give the county authority and power to meet emergencies of this character.

Answering your second inquiry, it is my opinion you are authorized to pay the hospital bill for a person wounded no matter whether he was at fault in bringing on the difficulty in which he was wounded or not. It is a humanitarian proposition and not a legal question of who may or may not be at fault in the difficulty. If he were already wounded when made a prisoner and needs medical attention, it is the county's business as well as duty, to see that he gets it. In other words, if he had typhoid fever, or any other disease, when he was arrested and confined in jail, under the statute above, the county would assume the duty of giving him medical attention.—Opinions of Attorney General, Vol. 5, p. 322 (Office Edition).

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 25, 1932.

Hon. W. O. Croley, Chairman,
County Board of Registrars,
Geraldine, DeKalb County, Alabama.

Registration Lists—Purging lists of those who have not been lawfully registered or who have lost their legal residence in the county.

Residence—Definition of for registration and voting purposes.

Opinion by Assistant Attorney General McCall.

Dear Sir:

I have your letter of January 13, 1932, in which you request my opinion:

"1. If a 'voter' has moved his family and belongings to another county to make his residence there, should his name be stricken from the registration list in the county from whence he has moved?"

"2. If a 'voter' has been registered by a former Board of Registrars and his application was made by some one else as his agent, has he the right to make application again and be registered, although his name is now on the 'certified list of voters' in his county?"

In your first question you do not make clear whether or not the person has, himself, moved from the county, along with his family. I presume, however, that he has done so.

A "voter" is one who actually participates in an election by the people.

An "elector" is one who, having duly qualified to do so, is entitled to participate in any election by the people.

One who has paid his poll tax and registered is not necessarily entitled to vote in any election by the people. He may be disqualified because of forfeiture of citizenship through conviction of some crime, or because he did not pay all poll tax due by him, or because he obtained his registration by fraud, or because he has lost his political residence in the county or state.

Registration alone does not make one a qualified elector, for he may register **before** he has been in the State two years, and the county twelve months, if, by the next **general** (not special or primary) election following his registration he will have been a resident of the State, county and precinct for the period prescribed by the Constitution. Furthermore, he may not have paid all poll taxes due, within the time prescribed by law.

But to entitle one to vote in any election by the people, he must have been duly (legally) registered; he must have paid all poll taxes due by him within the time prescribed by law; he must have maintained an unchanged residence in the state and county for the period prescribed by the Constitution; and he must not be laboring under any of the disabilities fixed by law, such as conviction of certain crimes or offenses, or any of the other matters set forth in Section 182, Constitution of Alabama, 1901.

With the foregoing in mind we will approach the question as to residence. The following citations may serve to clarify the matter.

On questions of domicile, less weight is given to the party's declarations than to his acts.

3 Jacob's Fishers' Digest, tit. Domicile, p. 4225.
Lessee of Butler vs. Farnsworth, 4 Wash. C. C. 103.

On the question of intention, the declaration of the party, though admissible, is not necessarily conclusive because it may be disproved by his acts.

People vs. Halden, 28 Calif. 124.

If a party moves his family to a particular district, there builds or furnishes them a home, keeps his property and continuously returns there as leisure allows, and remains there with his family during sickness and unemployed time, this constitutes residence even though he might be employed in labor in other districts, and claims that to be his residence.

People vs. Halden (supra).

The controlling inquiry is, where if at all, does the party actually make his home, and claim, for the time, to exercise rights of property or of citizenship incident to or resulting from permanent residence.

Actual, and not imaginary residence controls.

One who does not reside in a district is not a legal voter therein, even though he send his children to school therein and always voted there and previously presented a peition, never acted on, to have his land attached to that district.—Buckingham vs. Angell (Ill.) 87 N. E. 285.

Although intention is an important element of the status of an elector, his own statement as to any such intent cannot of itself be controlling in respect to his having voting privileges.—Seibold vs. Wahl (Wis.), 159 N. W. 546.

Electors cannot be residents of one district and vote in another.—87 Wis. 554.

A person who removes with his family from one town to another does not retain the right to vote in the former town until he has acquired it in the latter.—McDaniel Case, 3 Pa. L. J. 310; Thompson vs. Ewing, 1 Browst, 103.

Residence does not mean one's permanent place of abode where he intends to live **all his days** or for an indefinite or **unlimited** time, nor does it mean one's residence for a temporary purpose with intention of returning to a former residence when that purpose shall have been accomplished.

Residence means one's actual home in the sense of his having no other home, whether he intends to reside therein permanently or for a definite or indefinite length of time.—Shaeffer vs. Gilbert, 73 Md. 66.

To constitute residence there must be an intention to remain, but this intention is entirely consistent with a purpose to remove at some future indefinite time.—McCary on Elections, p. 73, Sec. 98.

That a person not a resident of a school district honestly believed he was entitled to vote therein, would not authorize him to vote.—Penny vs. McRoberts (Ky.) 173 S. W. 786.

The right to register and vote is dependent on an actual, and not an imaginary, residence and is not a matter of choice.—People vs. Ellenbogen (N. Y.) 79 N. E. 1112.

The place of one's residence for the purpose of voting (or registering) is where he has his established home; the place where he is habitually present, and to which, when he departs he intends to return.—Berry vs. Wilcox (Neb.) 62 N. W. 249. Notwithstanding one may testify that his intention was to make his home in a certain place, if his acts are of a character to negative his declaration or are inconsistent with it, the court can not be governed by his testimony as to intention.—Nelson vs. Gass, Ann. Cas. 1915 C. 791.

Intent is manifested by conduct.—Same case.

A bachelor cannot claim the place where he takes his meals as his residence for voting purposes where he keeps a business and sleeping apartment in connection therewith in another ward (or county) at which he spends most of his time.—State vs. Savere (Iowa) L. R. A. (N. S.) 455.

Unmarried men had, some years previous to an election, resided in a ward or a city. They had moved out of the ward some years prior to the election and had not subsequently resided in or acquired a residence therein, though at previous elections they had voted in the ward. The court held they were not legal voters in the ward **from which** they had moved.—Widmayer vs. Davis (Ill.) 83 N. E. 87.

One rooming in one ward in a city (or in one county) and taking his meals in another is not a qualified voter in the ward (or county) in which he takes his **meals**.—Same case.

The object of requiring a voter to have resided for a certain time at the place where he offers to vote is that he may have an opportunity to acquire the necessary information to vote intelligently and to prevent colonization.—Estopinal vs. Michel (La.), 19 L. R. A. (N. S.) 759.

A party owned a place of business in a certain ward of a city. He had originally resided there. He had registered to vote in the ward in which that business was located. He removed from the place of business (keeping his business still there) to another place in the city about seventeen years before the municipal election, and at the time of the municipal election was living with his family at the latter place, although he

continued to vote as from his place of business all of these years. He occasionally slept at his place of business. His right to vote in the ward in which his busines was located having been questioned at a municipal election, and the only facts being what have been stated above, the court held he had no right to vote at his place of business.

> "The mere fact that he considered it desirable for political purposes to continue to register and vote from that point did not make him a resident (thereof) within the letter or the intent of the Constitution and the Laws of this State, as applied to the elective franchise."

In re Rooney, 159 N. Y. S. 132, 136.

> "It seems clear from reason and authority that a man cannot have two legal residences at the same time, and that for the purpose of voting, he cannot have a domiciling separate and apart from the home which he provides for his family, and which he habitually uses as his own habitation with no intention of departing therefrom, except for temporary purposes. He cannot actually live in one locality for the sake of the comfort, convenience and social standing of his family and maintain a wholly distinct political residence in (his place of business) or other place. That is not serving the purpose which the Constitution contemplated and it is not the law."

Same Case.

> "A residence for voting purposes is not a mere state of mind and cannot be established solely by purpose or intentions. The intention of the party is a material consideration in determining his place of residence. The intention we are interested in is not where he intends to vote, but where he intends to live as his permanent home. The right to vote may follow his intention, but the mere intention to vote at a place, standing alone has no particular bearing upon his place of residence."

Same Case.

The reasoning in the case last above cited applies equally to counties.

One who seeks to maintain the right to vote or register in DeKalb County, where his farm or other place of business may be located and on the other hand actually lives in another county or State for comfort, convenience or other like reason, cannot justify his registration or vote and this is so because he is seeking to maintain the right to register and vote in DeKalb County purely by an operation of mind, evidently considering it better for his private interests to vote in DeKalb County rather than elsewhere.

"The expression is often found in judicial utterances that the question of residence depends upon the intent of the individual but the context is usually found to contain the limitation that the intent is not a mere arbitrary declaration on the part of the individual, but is to be gathered from his conduct as evidenced by his daily life."

"The fact that one owns the premises from which (or in the precinct in which) he registers is one fact to be considered, but the more important fact is his present relation to the premises. * * What was his intention in removing from the original residence? Did he go away for a limited purpose, intending to return, not merely to the premises but to the residence, to continue his relation as a resident of the community, or was it with the purpose of making a new home, of taking up a new residence. * * * The mere intention of coming back to the premises for the purpose of voting is not such an intention as will preserve the residence."

"Residence does not depend in the slightest degree upon the elective franchise."

"* * * No mere purpose on the part of an individual to hold on to a political residence, apart from his civil abode, can satisfy the letter or the spirit of the Constitution, which seeks to vest the political powers of the State in its resident citizens at the point of their domicile."

In re. Rooney, supra.

Section 366, Code of Alabama, 1923, provides as follows:

"366. Residence not acquired or lost by temporary absence.—No person shall lose or acquire a residence either by temporary absence from his or her place of residence without the intention of remaining, or by being a student of an institution of learning, or by navigating any of the waters of this state, the United States, or the high seas, without having acquired any other lawful residence, or by being absent from his or her place of residence in the civil or military service of the state, or the United States; neither shall any soldier, sailor or marine, in the military or naval service of the United States, acquire a residence by being stationed in this State."

Any intention to change the domicile, without an actual removel with the intention of remaining, does not cause a loss of the domicile, so as to deprive a party of the right to vote.—State vs. Hallett, 8 Ala. 159.

If a voter goes to another county for a temporary purpose only, and with the intention of returning, this does not work a change of domicile or a forfeiture of his right to vote in his own county.—Griffin vs. Wall, 32 Ala. 147; State vs. Hallett, supra; Boyd vs. Bock, 29 Ala. 703.

A resident of the State of Georgia came to this State for the purpose of settling here, and leased lands and purchased materials for the erection of a foundry, and returned to Georgia for his family, and, after some detention, returned with his family, and ever since has resided in the State, held in a prosecution for illegally voting, that he did not lose his domicile in Georgia, or acquire one in this State, until his actual removal to this State with the intention of remaining here.—State vs. Hallett, supra.

> "One who leaves the State, moving to another State, where he secured employment and has ever since lived and worked, intending to remain there for an indefinite term, is not an actual bona fide resident of Alabama."

State ex rel Hodges vs. Joyce (La.) 54 So. 934.

If a party once registered in DeKalb County, after having maintained his bona fide residence therein as prescribed by the Constitution, and later left the county, moving his family to another county or another State, and, if around and about his new place of abode all of his home activities center; if, for instance, he eats there, sleeps there and partakes of the general affairs of home life there, that place becomes his domicile, his real home, his legal residence, and the mere fact that he may be engaged in business or be employed in DeKalb County or continues to vote therein does not make him a legal resident of DeKalb County, but in attempting to continue to vote in the county he violates the law.

Therefore, in answer to your first question will state that after the Board of Registrars has given the party the proper notice and chance to be heard, said Board would be justified in striking such party's name from the registration list on the ground that he is no longer domiciled in the county.

In answer to your second question will state that after the Board has given notice as required by law, it should purge such person's name from the registration list. Registration must be in person and not by agent. Where registration was not in person it is unlawful.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 26, 1932.

State Tax Commission,
CAPITOL.

Attention: Mr. John S. Mooring.

(1) License Inspector's authority limited to County or Counties for which he is appointed.

(2) Person liable for motor vehicle license in Calhoun County and operating the motor vehicle in St. Clair County can be prosecuted in St. Clair County for failure to display the proper license tag but cannot be prosecuted in St. Clair County for failure to take out the license, the venue of such offense being in Calhoun County.

(3) License Inspector of St. Clair County reporting to the Probate Judge of Calhoun County a party's failure to take out the license not entitled to the 15% penalty collected from such delinquent.

Opinion by Assistant Attorney General Moore.

Gentlemen:

I have your letter of January 18th, 1932, in which you state:

"This letter has no reference to the law prohibiting the operation of automobiles without a tag displayed on the rear, as provided in Section 20, Acts 1923, page 284. We presume this provision of law applies wherever the offense is committed.

"Section 367, Acts 1919, prescribes a penalty for failure to take out license, this provision applying to automobile as well as other licenses.

"Section 72, Acts 1927, page 139, provides for the appointment of License Inspectors and prescribes their duties. Please advise us whether under the two last references a License Inspector would be entitled to fees under the following circumstances."

You ask my opinion on the following questions:

"(1) A bus company with its home in Anniston operates busses through Cleburne and St. Clair counties into Birmingham. This bus company has failed to take out a license as required by law. The License Inspector of St. Clair County stops the bus in transit and demands payment of the license, arresting the bus driver for failure to take out a license. Of course, the law requires that whatever license may be due should be taken out in Calhoun County since the owners of the bus live in that County. The question is whether the License Inspector in St. Clair County would have the right to prosecute 'for failure to take out license.'

"(2) The license being due in Calhoun County and the License Inspector of Calhoun County having failed to issue the proper citation on notice to the Probate Judge, would the License Inspector of St. Clair County be entitled to the fifteen percent penalty provided in Section 72, Acts 1927, page 139, when the license is taken out?"

The questions propounded by you are of considerable difficulty as the statutes are not at all specific on the points raised by you. Section 20, Acts 1923, page 284, provides:

> "It shall be a misdemeanor punishable by a fine of not exceeding $25.00 for each offense to display the tag on any place other than the rear of the motor vehicle or for operating a motor vehicle on the public highways of the state without a license tag displayed as provided herein."

It is therefore without question a criminal offense which may be prosecuted in St. Clair County for the operation of a bus or other motor vehicle without displaying the proper license tag upon the rear of such motor vehicles and the License Inspector is authorized to institute criminal proceedings against any party so doing. Clearly I think the jurisdiction of this offense is in any County where the offense occurs.

The next question is whether the License Inspector in St. Clair County would have the right to prosecute for "failure to take out license."

By Section 18, Acts 1927, page 139, very clearly the license is required to be taken out in the County where the owner of the vehicle resides or, if the vehicle is owned by a firm or corporation, in the County where the motor vehicle is used or operated. You do not state clearly whether the bus company is an individual or a corporation, but if the latter and the same is chartered to do business in Calhoun County, then, in my judgment, Calhoun County is the proper county in which license should be taken out. If this be true, can the party be prosecuted in St. Clair County for failure to take out license due in Calhoun County. The question is one of venue, and it seems to me that the offense for failure to take out the license is limited to Calhoun County, that being the only place where the party can legally take out a license. It is therefore my opinion that the License Inspector of St. Clair County cannot prosecute such bus company in St. Clair County for not taking out a license in Calhoun County. It is his duty to prosecute such company for failure to properly display the tag and every separate act would constitute a separate offense and subject the party to another prosecution.

In your next question you ask if the License Inspector of Calhoun County, having failed to issue the proper citation, can the License Inspector of St. Clair County collect the 15% penalty provided in Section 72, Acts 1927, page 139.

This Section provides that the Tax Commission is authorized and empowered to appoint a License Inspector **for each County**, provided that the same person may be appointed for more than one County. Therefore, in my judgment, the authority of the License Inspector is limited to the county or counties for which he is appointed. The Act further provides that it is the License Inspector's duty to examine the license records of each city or town located in the county or counties of which he has

been appointed License Inspector and shall forthwith cite such delinquent to appear before him at the Courthouse of the county in which citation is issued, and if such license is due shall cause the delinquent to appear before the Probate Judge of the county and take out same.

The Act also provides:

> "For performing the duties required by this Section, the License Inspectors are entitled to be paid by the delinquent in addition to the license, 15% of the amount of the license so collected from each delinquent which must be paid in all cases if report has been made to the judge of probate of such delinquency."

I have summarized the pertinent portions of Section 72 of the 1927 Revenue Act. It will be seen from the foregoing that the License Inspector is appointed for certain counties. That he must examine the license records of the county or counties for which he has been appointed and shall report the matter to the Probate Judge of such county. There is no specific authority for a License Inspector to report a delinquency to the Probate Judge of another county than that for which he is appointed, and in my judgment if he so does, unless as the agent and deputy of the regular License Inspector, he is not entitled to the fees. The laws relating to fees and penalties must be strictly construed and in the absence of a specific statute extending the jurisdiction of a License Inspector beyond that of the county for which he is duly appointed License Inspector, I hesitate to hold that he can collect the fees in such other counties where he may choose to make citation or report delinquencies to the Probate Judge.

In coming to this conclusion I am influenced somewhat by the long continued departmental ruling and opinion of the Tax Commission which has given the foregoing construction for a number of years preceding, I am informed.

If the License Inspector of Calhoun County fails to require delinquents to take out proper license, then the Tax Commission under its power to remove him at will, can compel him to such action, if it desires.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 26, 1932.

Hon. S. R. Butler,
State Tax Commissioner,
CAPITOL.

Transportation companies required to report all deliveries of gasoline or lubricating oil in this State under House Bill 641, General Acts, 1931, page 410.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"One of the Express companies operating in this State has raised the question that perhaps they are not required under amended Section 12½ of the 1923 Gasoline law, to report to the State Tax Commission the deliveries of gasoline and lubricating oil in this State, claiming that they only handle such products in ten-gallon quantities or less.

"Section 12½ as amended in 1931 requires 'freight agents of railroad companies, steamship companies, steamboat companies, tugboat, barge line or other transportation companies, now operating or which may hereafter operate in the State of Alabama' to report to the State Tax Commission on or before the 20th of each month all deliveries of gasoline and lubricating oils made in this State during the previous month. See H. B. 641, page 610, General Acts 1931."

You ask my opinion on the following:

"In your opinion, is there any provision of law under which the Express Company, or any other transportation company can be exempt from the operation of the above mentioned Act, by reason of the fact that they handle gasoline or lubricating oils in quantities of ten gallons or less?"

In reply, I advise that said Act requires transportation companies to report **all** deliveries of gasoline or lubricating oils in the State. I know of no statute exempting such companies from reporting deliveries of ten gallons or less.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 26, 1932.

Hon. L. H. Williams, Jr.,
Member of the Board of Registrars,
Washington County,
Sunflower, Alabama.

1. Neither race, color, previous condition of servitude nor sex is either a qualification or disqualification for voting in the United States or in any state.—15th and 19th Amendments of the Constitution of the United States.

2. There are both qualifications and disqualifications, other than race, color, previous condition of servitude or sex, prescribed by the Constitution and laws of Alabama, which apply to every one applying for registration, regardless of race, color, previous condition of servitude or sex.

3. The Board of Registrars is presumed to be composed of men of sound judgment in the application of these provisions of the Constitution and laws of the State of Alabama in the instance of the first registration of an applicant for registration.

4. Where a person has already been registered, he is not required to be registered again unless he shall change the county of his residence.

5. Provision for purging the registration list is provided by Section 392 of the Code of Alabama; but such purging cannot be based on race, color, previous condition of servitude, or sex. Said Section 392 provides how it shall be purged.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Receipt of your letter of January 18th acknowledged. In reply to your inquiry will say that the Fifteenth Amendment to the Constitution of the United States reads as follows:

"The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude."

As the law now stands, neither race, color, previous condition of servitude, nor sex is either a qualification or disqualification for voting. Other than these characteristics, there are qualifications and disqualifications, for voting prescribed by the Constitution and laws of the State of Alabama. —Sections 177 to 196 of the Constitution of Alabama, Article 3 of Chapter 19, of 1923 Code of Alabama, as amended by Act No. 289, approved August 20th, 1927 (Act 1927, page 247, et seq.)

Where a person has already been registered, he is not required to be registered again unless he or she shall change the County of residence.— 1923 Code of Alabama, Section 385.

Provision is made by Section 392 et seq. of the Code of Alabama for purging the registration list of the names of those who have died, become non-residents of the State, become insane and been so declared by inquisition of lunacy, or who have been convicted of any offense mentioned in Section 182 of the Constitution after registration, or otherwise disqualified as electors under the provisions of the Constitution of Alabama, and of

any name that may have been fraudulently entered on such list. Race, color, previous condition of servitude, nor sex, in itself, is either a qualification or disqualification. It follows that the registration list cannot be purged on account of either of these qualities.

It was presumed by the makers of the Constitution and by the Legislature that the Board of Registrars appointed would be men of good sense, and sound judgment, and not register, in the first instance, persons not qualified as provided by the Constitution and laws of the State of Alabama.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 27, 1932

State Tax Commission,
CAPITOL.

Attention: Mr. John S. Mooring. The words "operating for profit" as used in Section 20, Acts 1927, page 139, are intended to apply to corporations or individuals selling gasoline.

Opinion by Assistant Attorney General Moore.

Gentlemen:

I have your letter of January 14, 1932, in which you state:

"A great deal of complaint is being made to this Commission regarding private pumps being operated without taking out a filling station license, on the ground that they are not being operated for profit. You will notice that Section 20, Acts 1927, page 139, levies a license on filling stations or pumps 'operating for profit.' We are in some doubt as to the meaning of the words 'operating for profit.' For example, a cotton mill having several hundred employees sells gasoline to these employees at cost. It is, of course, not the intention of the mill to make a profit directly from these sales. However, indirectly it is profitable to the mill to operate these pumps. For instance, it avoids the difficulty of these operatives buying gasoline on credit, with the result that in many cases the mill would be annoyed with garnishments. It is easy to see that there are other advantages to the mill in selling their own employees gasoline at cost. In other words, the operation of a pump or pumps under these conditions does affect indirectly the profit of the mill.

"Please advise us if in your opinion the sale of gasoline at cost has the effect of exempting the pump so selling from a filling station license."

In reply thereto I beg to advise that in my opinion the words "operating for profit" are not intended to apply to cases such as suggested by your letter. Presumably these words under the rule of strict construction should be limited strictly to cases where the pump is operated strictly for the operator's own business and convenience or perhaps for charitable purposes. If though, it is in any way a business enterprise open to the public or a part of the public, these words would not exempt it from the payment of license, in my opinion. In the case of State ex rel Dawson, Attorney General, vs. Sessions, Secretary of State, 147 Pac. 789, (Kan.) a similar question was presented. A rural telephone company asked for an exemption as being a corporation not organized or "operated for pecuniary profit." "The facts showed that the incorporators had no capital stock, received no pay, and declared no dividends. The company was designed for the material advantage of its members who had chosen to adopt this particular form of incorporation as adapted to their needs." The Court said "the organizations are in a sense operated for pecuniary profit as distinguished, for instance, from moral profit. They in a sense do business for pay as distinguished from doing it for benevolence." The facts showed that there were two mutual corporations of this sort, one which maintained a line of wires connecting with a telephone exchange, the other a system of irrigation. They were mutual companies not organized for profit in the usual sense of the word, but for the benefit of their members, and the Court held that they were in a sense operated for pecuniary profit.

If this be the rule as to mutual associations, certainly it would seem that a corporation selling gasoline products to a limited class, its employees, could not be exempt because of the use of the expression "operating for profit" in the license statute fixing the license on gasoline pumps.

I therefore hold, under the facts set out by you, that the filling stations or pumps thus operated are not exempt from the payment of the license required by law.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 27, 1932

Hon. J. M. Money,
Judge of Probate,
Scottsboro, Alabama.

Party working on public road in lieu of paying road tax, is not entitled to damages from the county in injury sustained.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of January 27, 1932 in which you request my opinion as follows:

> One, C. L. Hammons, while working out his free time on the public road, in hauling gravel out of a pit, one of his mules was injured. Is the county liable in damages to Mr. Hammons for this injury?

I do not exactly understand what you have reference to when you say, "while working out his free time." However, I take it for granted that Mr. Hammons was working out his time on the public road rather than pay certain amounts assessed against him as road tax. If this is true, then your county would not be liable for any damages which he may have sustained on account of his mule's becoming injured while it was being used by him in working out this time.

When he volunteered to work instead of pay, and used his mule, he was doing volunteer service in working in lieu of paying a tax due the county. He was not employed by the county nor compelled by the county to perform this work, therefore, in voluntarily electing to perform the services, he assumed the risk just like he would have to do when he plows his own farm.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

February 27, 1932

Hon. F. M. Phillippi,
Deputy Superintendent of Insurance,
CAPITOL.

Since the approval on July 22nd, 1927, of Act No. 163, any domestic insurance company commencing to do business in this State, within a calendar year, by virtue of Subsection (b) of Section 3 of said Act, is required to pay a tax for the privilege of doing an insurance business in this State as follows:

1. At the end of the first complete calendar year of its operation in this State, such Company must pay a tax for the first year of its operation in this State, in an amount equal to one dollar of each one hundred dollars of gross premiums, less return premiums, received by it during such entire calendar year. This amount becomes the amount of privilege tax for the first year of its operation in this State, as well as for such entire calendar year, and for the year succeeding such entire calendar year, all payable in the month of January or February of the year succeeding such entire calendar year.

2. Where a company begins to do business on the first day of January of any calendar year and does business during the entire calendar year, the first year of doing business by such company is the first entire calendar year; and the gross premiums, less return premiums received by it, for such first calendar year, is the basis of the measure of the privilege tax for such year and the succeeding calendar year.

3. Where an insurance company was engaged in doing business in Alabama at and prior to the time of approval of said Act and had paid its privilege tax for the year 1927, its privilege tax for the year 1928 was one dollar on each one hundred dollars of gross premiums, less return premiums, received by it during the calendar year, 1927, and was payable in January or February, 1928, for the privilege of doing business in Alabama during the calendar year 1928. In such a case there was no need to wait for the expiration of an entire calendar year and thus cause payments for two or three years to fall together; because there was at the beginning of the calendar year 1928, the entire 1927 calendar year of business for such a company, by the receipts for which the amount of privilege tax for the calendar year, 1928, could be calculated.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Receipt of your letter of January 26, 1932 is acknowledged. You make the following statement of facts:

A domestic insurance company began business in the State of Alabama on July 1st, 1928, and has continued to do business in Alabama ever since. You ask my opinion as to what amounts of privilege tax, under the provisions of subdivision (b) of Section 3 of Act No. 163, approved July 22nd, 1927, has been due and when.

You further state that it has been the understanding and practice of the insurance department of Alabama that the privilege tax, in such a case as the one stated, was as follows: One dollar on each one hundred dollars of gross premiums, less return premiums, received by it for business done by it in this State during the calendar year, 1928, as a privilege tax for doing business for the year, 1928, payable between January 1st and March 1st, 1929; one dollar on each one hundred dollars of gross premiums, less return premiums received by it for business done by it in this State during the calendar year, 1929, as a privilege tax for doing business in this State for the calendar year 1929. This last amount is also the amount for the privilege tax for doing business in this State for the calendar year 1930. The privilege tax for the years 1929 and 1930 became due and payable on January 1st, 1930, and delinquent March 1st, 1930.

> On the payment of the privilege tax for the calendar year 1929, the privilege tax for each succeeding calendar year, with such a company, was and is one dollar on each one hundred dollars of gross premiums, less return premiums, received by it for business done in this State during the preceding calendar year ending December 31st.

Such has been the interpretation and practice of the Insurance Department.

In reply, will say that under the foregoing interpretation of Subdivision (b) of Section 3 of Act No. 163, approved July 22nd, 1927, there is, in my opinion, nothing of which an insurance company could complain. Your interpretation resolves every reasonable doubt in favor of the Insurance Company. In my opinion, there was no legislative intent of allowing a domestic or foreign insurance company to do business in the State, at any time, without at some time, paying a privilege tax for such period of time. Where companies had been operating in the State a year or more prior to the adoption of said Act No. 163, and had kept their privilege taxes paid up, as provided by the former statute, the basis for calculating the privilege tax for the year, 1928, was clearly established on the coming in of the calendar year 1928, as it had been doing business in the State during the entire calendar year 1927, and the amount of gross premiums, less the amount of return premiums for the calendar year, 1927, could then be calculated; but where a domestic company begins business subsequent to the passage of said Act No. 163, it was, in my opinion, the legislative intent to await the passage of time until a full calendar year of operation had expired to obtain a proper measure for the privilege taxes for the year or years of operation going before, as well as for the next succeeding year. The only real question, in my opinion, involved is whether the tax for the second as well as the first year of operation in this State shall be measured by the receipts of the first full calendar year; or whether the tax for the first calendar year may be based on the receipts of the first year, while the privilege tax for the second and third calendar years must be based on the receipts of the second calendar year.

In fixing a license tax or a privilege tax for a calendar or fiscal year, the rule is that any part of the tax year takes the tax for the whole year, unless the statute otherwise provides. Said statute No. 163 does not otherwise provide. Said subsection contains the following:

> "Provided that such domestic insurance company shall at the end of the first complete calendar year of its operations pay to the Commissioner of Insurance an amount equal to one dollar on each one hundred dollars of gross premiums, less return premiums, as a tax for the first year of its operations in this State."

In the case already stated, the first full calendar year of its operations in this State was the calendar year, 1929. The first year of its operations in this State was the year 1928. It was the legislative intent, in my opinion, that one dollar on each one hundred dollars of gross

premiums, less return premiums, received by it during the first complete calendar year of its operation in this State, was to be the amount of the privilege tax, in such case as the one under consideration, for the first, second and third year of its operation in this State. The first complete calendar year is the first time that a measure for the tax could be gotten. It did not become a tax measured by receipts of the preceding year until the tax for the year, 1930, became due and payable. It was not intended that the second year of operation should be a hiatus in which no privilege tax was due; but that this should be the measure for all years, including the one where the tax would be based on the income of the preceding year; which it did, in the case stated, in January of the year, 1930. From then on, the tax is regulated by the premium income of the preceding calendar year. Under the foregoing construction, the taxes for three years became due January 1st, 1930, and payable at any time between January 1st and March 1st, 1930.

As already stated, the fact that the practice heretofore has been to collect for the first years operation on the basis of premiums received the first year, was not a matter of which domestic insurance companies could complain, unless the receipts of the first year were as much or more than the receipts of the first full calendar year. As a general rule they would be less for the first mere part of a year. Gross receipts of premiums for the first full calendar year, less return premiums, is the measure which should be used until and including the succeeding calendar year.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 1, 1932

Hon. Wm. F. Feagin, Director,
State Board of Administration,
CAPITOL.

Sentence and Probation.

Opinion by the Attorney General.

Dear Sir:

In your letter of February 29th you set out a judgment of conviction of the Circuit Court of Marshall County by which a defendant convicted of forgery is sentenced to an indeterminate sentence of from two years and one day to two years and thirty days and in the same sentence is put on probation for a period of three years after he has served one year, and you ask:

"1. Whether that portion of the sentence which seeks to put defendant on probation after he has served one year, is legal.

"2. Whether the portion of the judgment which sentences the defendant to a maximum of two years and thirty days and a minimum of two years and one day is legal.

"3. What should be the record of the judgment entered on the records of the Convict Department?"

I advise as follows:

1. Under an Act of the Legislature passed July 14, 1931, see Acts 1931, p. 444. The Court has authority to suspend a sentence and to place the defendant upon probation for such period and upon such terms and conditions as the Court may think best. This Act does not give the Court authority to sentence a defendant for some period of time and to place him on probation after the time is served. The Court can either sentence the defendant or put him on probation. The portion of the sentence which seeks to put defendant on probation after he has served one year is not legal.

2. The sentence which was passed by the Court after the judgment of guilty giving the defendant a maximum of two years and thirty days and a minimum of two years and one day, is legal and the fact that he sought in the same order to place defendant on probation after he has served one year does not destroy the legality of the sentence which was legal.

3. Your records should show that the term of the defendant is maximum sentence two years and thirty days, minimum sentence two years and one day.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 2, 1932

Hon. Knox E. Wooley,
Sheriff of Shelby County,
Columbiana, Alabama.

Fee for serving notice on elector is payable as ex officio services.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of February 10, 1932, in which you request my opinion as follows:

"Will you please give me an opinion as to how sheriffs should be paid for serving notice on electors to show cause why their names should not be stricken from registration list."

You will note in Section 7287, Code of Alabama, 1923, that for this service you are entitled to sixty-five cents. It is my opinion this service is taken care of by your ex officio fees, and should be included among the items going into your account for such fees. I am unable to find any provisions made for the payment of this cost from any other fund, and this being true there is no other place to put it. The ex officio fees of officers are intended to take care of matters of this character.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 2, 1932

Hon. L. G. Smith, President,
Alabama State Bridge Corporation,
CAPITOL.

Alabama State Bridge Corporation not authorized to cancel insurance secured under terms of contract between the Bridge Corporation and the trustee for the bond holders providing for insurance against damage by fire, lightning, floods, tornado, etc.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of February 1st, in which you state:

"Paragraph 10 on page 4 of the purchase agreement between the Alabama State Bridge Corporation and the Banks is as follows:

" '10. The Corporation agrees that each bridge constructed out of the proceeds of said bonds shall be insured, and kept insured, at its own expense, against damage by fire, lightning, floods, rise in waters, ice, collision, explosion, strikes, riots and civil commotions, malicious damage, tornado and windstorm, earthquake and collapse, up to not less than eighty per cent of its replacement value, (.....) and loss of the use and occupancy of said bridge resulting from any of the aforesaid calamities or otherwise. Provided, however, that should the Corporation succeed in procuring the enactment by the Legislature of Alabama of a statute whereby the State of Alabama shall agree to restore or repair any bridge injured in any manner aforesaid, the liability of the Corporation to insure said bridges with private companies, except as to insurance against (.....) loss of

use and occupancy, shall cease, and no such insurance shall be required with private companies so long as said statute shall remain in effect.'

"The tolls from the bridges at this time are insufficient to pay the interest charges and the bond maturities on the bridges and the Corporation considers the premium an additional charge that is not only not justified but out of all proportion to the insured risk."

"Please advise if the Corporation has the authority to cancel such insurance."

In reply I beg to advise that the opinion of January 26th holding that there was no necessity for the Bridge Corporation to take out public liability insurance was rendered for the reason that there is no liability on the Bridge Corporation for damages which such policies protected against, in my judgment. This opinion contains the following provisions:

" 'It is an arm of the State with none of the limitations, disabilities, or responsibilities that affect private corporations as such.' (116 So. 695)

"This I take it, is a complete negation of the right of anyone to hold the Bridge Corporation liable in damages by suit. If this be true there is no liability and hence is no necessity for insuring against such liability. If there can be no damage to the Bridge Corporation then to insure against such damage would be a needless thing and, in my opinion, there is not only no necessity, but no authority for taking out such insurance and the payment of premiums due thereon."

The insurance referred to in your letter of February 1st, however, is a different insurance. It is against fire, floods, tornado, etc. Such damages might arise at any time and loss accruing therefrom would accrue directly to the Bridge Corporation and to the security on which the bonds were issued. Therefore, in my opinion, it would directly affect the bond-holders unless the Legislature by statute should agree to restore or repair any bridge injured in such manner, which the Legislature has thus far not seen fit to do.

It is therefore my opinion that as the loss from one of the causes enumerated would directly affect the security of the bond-holders, the Alabama State Bridge Corporation is not authorized to cancel such insurance.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 2, 1932

Hon. G. H. Howard,
Judge of Probate, Elmore County,
Wetumpka, Alabama.

Probate Judge—Fee for services rendered in proceedings to have persons declared of unsound mind and appointing guardian.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of January 12, 1932, in which you request my opinion as follows:

"Please advise us if Section 7285 of the Code of 1923 allowing the Probate Judge $5.00 for services in proceedings to have a person declared of unsound mind includes each and every act connected therewith, including issuance of notice to respondent, subpoenas to witnesses, recording all papers, approving Guardian's bond and granting letters of Guardianship, or does the Probate Judge receive recording fees in addition to the fixed fee of $5.00."

It is my opinion this provides only for the hearing and does not include the issuance of subpoenas to witnesses, notice to respondent, recording papers nor approving guardian's bond and granting letter of guardianship. In other words this fee of $5.00 is the allowance for the judicial determination of the issues involved and does not have anything to do with the other fees incident to the proceedings.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 2, 1932

Hon. Eugene B. Henry,
Commissioner of License, 117 Courthouse,
Birmingham, Jefferson County, Alabama.

Under provisions of Section 18, Acts 1927, p. 139, license for motor vehicle owned by a firm, corporation or association should be taken out in county where same is used or operated.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of February 3, 1932, in which you state:

"A Mr. E. S. Klyce, operates the Hertz Drive-It-Yourself Station, in Birmingham, Montgomery and Mobile. Due to the fact that he is constantly switching his automobiles from one of these places to the other and that Birmingham is his headquarters, he has been getting all of his tags here. This year however, he has been troubled with the License Inspector at Mobile who is trying to force him to buy some of his tags there.

"Kindly advise whether or not under the circumstances, it is permissible for him to continue to buy his tags here."

In reply I beg to advise that Section 18, Acts 1927, p. 139, provides as follows in part:

"* * * No license shall be issued to operate a motor vehicle on the public highways of this State, * * * until the ad valorem tax on such vehicle shall have been paid in the county * * * where the owner of said vehicle resides, if the vehicle is owned by an individual, and if the vehicle is owned by a firm, corporation or association, then as evidenced by the receipt of the tax collector in the county in which said motor vehicle is used or operated."

This section seems to settle your question. If the automobiles are used or operated in Mobile County so as to acquire a situs for taxation in that county, then proper license tags should be taken out in Mobile County. Of course, the same would apply to such motor vehicles in Birmingham and Montgomery.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 2, 1932

Hon. O. L. Haynes,
Secretary, Alabama Real Estate Commission,
CAPITOL.

Where license has been issued to a person as real estate salesman in the employ of a broker, the broker cannot transfer such salesman's license to another party or use same except for the one to whom originally issued.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of January 10, 1932, in which you state:

"Quite often a real estate broker will pay the license fee for a salesman in his employment. The salesman may change his employment or he may go into a different line of work. The broker has received no benefit from the salesman's license as it was only used two weeks before the salesman changed his employment. May the broker employ another salesman and contend that he should be allowed to work the new salesman under the license held by the former salesman who left his employment?"

In reply thereto I beg to advise that it is my opinion that the license is issued to the individual salesman and is not transferable. I know of nothing in the statute authorizing such a transfer.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 2, 1932

Hon. Thos. R. Fariss,
Chairman, Board of Registrars,
Montgomery, Montgomery County, Alabama.

Under the law, as now provided by Section 393 as amended by an Act of the Legislature approved August 20, 1927 (General Acts, 1927, p. 274) boards of registration have only one day in which to hear reason why certain names proposed to be stricken from the list should not be so stricken.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of November 25, 1931, in which you request my opinion as follows:

"Referring to Section 373 of the Code in regard to compensation of registrars and Section 393 of the Code as amended by an Act of the Legislature of 1927 (Acts 1927 page 274) requiring the Board of Registrars to meet on the second Monday in February, please advise if the Board, at this meeting, may continue longer than one week if necessary to comply with the provisions of this section."

It is my opinion that your Board, under the law as it now stands, has only one day in which to hear those whose names are proposed to be stricken from the list, and this is provided for under Section 393, as amended by an Act approved Auugst 20, 1927, (General Acts, 1927, p. 274). This Act not only amends this section, but it amends Sections 375, 376, 387, 392, 402, and 403, but failed to amend Section 394, which section reads as follows:

"394. Time and place of meeting.—The board of registrars shall meet in each county on the second Monday in December, 1921, and every two years thereafter and may continue in session one week."

You will note this Section says such board shall meet on the second Monday in December, 1931, and every two years thereafter and may continue in session one week, but this section is rendered inoperative by the amendment of Section 375 which places the time of registration between October 1st and December 31, 1927 and each two years thereafter. Certainly then, if the registration does not end until December 31st of any registration year, this would render impossible the meeting of the Board for the purpose of hearing those whose names are proposed to be stricken from the list on the second Monday in December of such years, so we have to look to Section 393, supra, as amended, which places the time of meeting on the first Monday in February to hear cause why any name proposed to be stricken from the list, should not be stricken, and this statute does not provide but for one day, viz., the first Monday in February, and this day being distinctly designated with no authority to continue beyond this time, it is my opinion, as stated above, that you have only one day under the law as now amended. This section is as follows:

"393. (324) Notice and hearing when names are to be stricken from list.—When the name of any elector is proposed to be stricken from the registration list, unless he or she is dead or is a non-resident of the state, notice shall be issued to him or her by the board of registrars, citing him or her to appear before the board on the second Monday in February, following, and show cause why his or her name should not be stricken from the list. Said notice shall be served by the sheriff at least five days before the second Monday in February. The board of registrars shall in addition to the above notice give notice in some newspaper published in the county by one insertion."

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 4, 1932

Hon. Arthur H. Berg, Chairman,
Board of Registrars, Mobile County,
109 Monroe Street,
Mobile, Alabama.

How citizenship is restored to those convicted and sentenced to State or Federal penitentiaries.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of January 23, 1932, in which you request my opinion as follows:

> "Would a man having been convicted in Federal Court and sentenced to serve for a year and a day or more and been cited by the Board of Registrars to appear before them to show cause why his name should not be taken from the list be entitled to vote if he has had his civil rights restored by the Governor but has not received a pardon from the U. S. President."

The right of suffrage is purely a matter which comes within the jurisdiction of each sovereign state. In this State those who are disqualified from voting are listed under Section 364 of the Code of Alabama, 1923. Section 365, Code of Alabama, 1923, states how one disqualified under Section 364, supra, may have his rights restored and is as follows:

> "Pardon restores citizenship and right to vote.—Any person who is disqualified from voting by reason of conviction of any of the offenses mentioned in Section 364 (293) of this code, except treason, whether the conviction was had in a state or federal court, and who has been pardoned, may be restored to his or her citizenship with "right to vote by the governor, approved by the board of pardons and specially expressed in the pardon."

You will note this Section in providing the method of restoration states that said Section applies where the applicant is convicted in the State or Federal Court. Therefore if the party here under consideration has been pardoned or has served his sentence, he may be restored to all his civil rights and be entitled to vote by proceeding as provided by Section 365. I might state further that if a man is convicted and sentenced to the Federal Penitentiary, say for two years, and is paroled and not pardoned before the expiration of his sentence, he would not be entitled to register and vote or have his citizenship restored until the arrival of the time when his sentence would have expired had he not been paroled, namely two years from the date when his sentence began. Of course if he has served his sentence then the question of pardon does not come into it. He could make application at any time for restoration as provided by law.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 4, 1932

Hon. J. R. Copeland,
Clerk Circuit Court,
Oneonta, Blount County, Alabama.

Solicitor's fee for conviction for operating automobile with improper tag.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of January 14, 1932, in which you state:

"I have a number of cases in my office charging violation of Act No. 206, as passed by the Legislature at its regular session 1931, regulating the transfer and use of automobile license tags. Said Act was approved May 23, 1931."
You request my opinion:

"What amount should I charge as solicitor's fee where the defendant is charged and convicted of operating a motor vehicle with improper tag?"

Section 3738, Code of Alabama, 1923, provides among other things: "For each conviction of a violation of the revenue law, not otherwise provided for . . $30.00." Under an Act approved May 23, 1931 (General Acts 1931, p. 259) this violation is a violation of the revenue laws of the State not otherwise provided for.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 4, 1932

Hon. A. G. Teague,
Clerk Circuit Court,
Ashville, Clay County, Ala.

Printing of court docket for distribution among attorneys and litigants a proper charge against the county.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of January 26, 1932, in which you request my opinion as follows:

"Kindly advise if printing of court docket for distribution among attorneys and litigants is a proper charge against the County."

It is my opinion that the printing of a court docket for distribution among attorneys and litigants is a proper charge against the county under Section 6732, Code of Alabama, 1923, which is as follows:

"6732. Clerk's stationery to be paid for by the county.—The court of county commissioners must allow to the clerk of the circuit court the amounts properly expended by him for typewriters, books and stationery for the use of his office."

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 4, 1932

Hon. G. H. Howard,
Judge of Probate, Elmore County,
Wetumpka, Alabama.

County may appropriate money to pay the salary of Assistant to the Superintendent of Child Welfare provided a portion of such salary is also paid out of the public school funds of the County.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of January 13, 1932, in which you state:

"Please advise us if the County can legally appropriate money to hire an assistant to the Child Welfare Superintendent to assist her in dispensing funds coming into her hands for the needy."

In reply thereto, a reference to Section 150 of the Code of 1923 would have answered your inquiry without an opinion, Section 150 provides as follows:

'Powers of County Board of Child Welfare.—The county board of child welfare shall have power: 1. To employ an executive agent to be known as the county superintendent of child welfare, who shall serve at the pleasure of the board and whose salary shall be fixed by said board by and with the consent of the county board of education and the court of county commissioners, or board of revenue of the county, one-half of which shall be paid out of public school funds of the county and one-half out of public funds of the County; or in such other proportion as may be agreed upon by the boards authorized

to make payment by this article and the county board of child welfare, the court of county commissioners or board of revenue of a county, and the county board of education may accept from the governing body of any city, town or municipality in the county, or from any other source, funds to aid in the payment of the salary and expenses of the county superintendent of child welfare and his assistants as herein provided, and the governing body of any city, town or municipality in the county and the board of education of any city, town or municipality in the county may make appropriation for the purpose of aiding in the payment of the salaries and expenses of the county superintendent of child welfare and his assistants. No person shall be employed as county superintendent of child welfare of any county or assistant thereto, unless he shall have been certified as a person having met the requirements for such officer as prescribed in the law establishing the state child welfare department. 2. To employ an assistant or assistants to the county superintendent of child welfare when necessary, and to provide for the compensation of such assistant or assistants in the manner as herein provided in the case of county superintendents of child welfare."

It will be seen that a County Board of Child Welfare has the power to employ a County Superintendent of Child Welfare and an assistant or assistants to the County Superintendent when necessary, whose compensation shall be fixed by the County Board of Child Welfare "with the consent of the County Board of Education and the Court of County Commissioners or Board of Revenue one-half of which shall be paid out of the public school funds of the County and one-half out of public funds of the county; **or in such proportion as may be agreed upon by the Boards authorized to make payments by this article.**"

Section 2 is as follows:

"To employ an assistant or assistants to the County Superintendent of Child Welfare when necessary and to provide for the compensation of such assistant or assistants in the manner as herein provided in the case of County Superintendents of Child Welfare."

It will be seen from the foregoing that the County Board of Child Welfare may appoint a County Superintendent of Child Welfare together with an assistant or assistants all of whose compensation shall be paid out of the public school funds of the county, and the public funds of the county. It is, therefore, my opinion that the county can legally appropriate money to hire an assistant to the Child Welfare Superintendent provided a portion is also paid out of the public school funds of the county.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 4, 1932

Hon. A. F. Harman,
Superintendent of Education,
Montgomery, Alabama.

Construing the Act to provide educational opportunities for the children of soldiers and sailors.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I beg to acknowledge receipt of your letter of January 20th, as follows:

"There has arisen in connection with the case of a young woman who is a World War orphan and who is entitled to the benefits of the World War Orphans' Scholarship Act a question as to whether she is entitled to board under the provisions of the Act. The conditions are as follows: This young woman has been attending high school at New Brocton, Alabama, being transported in a private bus. This bus is now being discontinued and it will be necessary for her to board at New Brockton. Am I authorized to approve payment of board under the condition that she has no means of transportation at public expense to the high school which is attended by other pupils of her community; the board to be paid being that charged other pupils who attend high school?

"Mr. Gentry of this office made personal inquiry of Mr. Carmichael of your staff recently and the matter was fully gone into by them. Mr. Carmichael requested that a letter setting forth this specific case be submitted as a matter of record. I am asking that this communication take its regular course to Mr. Carmichael in order that we may have his written reply for our record."

You inquire whether or not you are authorized to approve the payment of board because this lady has no means of transportation at public expense to the high school she has been attending. In this connection, I beg to advise that the continuance or discontinuance of the bus has nothing to do with whether the lady is or is not entitled to the benefits of the Act.

I invite your attention to the provisions of the Act in question. The Legislature has appropriated the sum of $2400.00 per year, over a period of twenty years, for the sole purpose of providing matriculation fees, board, room rent, books and supplies for the use and benefit of children under sixteen and not over twenty-one years of age. In order to be entitled to the benefits of the Act, the father of the child must have been killed in action or died from some other cause during the World War, and between the dates mentioned in the Act. The child must have resided in the State of Alabama for at least twelve months prior to receiving the benefits of the Act.

In answer to your inquiry, in the absence of further facts, I can merely refer you to the Act itself.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 5, 1932

Hon. W. S. Garner,
Judge of Probate,
Ozark, Alabama.

Poll Tax—Can be paid legally only in county in which the person is registered or entitled to register.

Opinion by Assistant Attorney General McCall.

Dear Sir:

This acknowledges receipt of your letter of February 13, 1932 in which you state that a party in Dale County desires to qualify in the next Democratic primary. He was due to pay poll tax for the years 1919 and 1920 in Dale County. He had previously registered in Dale County and for several years had paid poll tax there. During the two years aforesaid he paid poll tax in Coffee County but did not register or vote in that county. His poll tax otherwise appears regular in Dale County.

Upon this statement of facts you request my opinion:

Can this party legally qualify in Dale County and, if so, what procedure must he follow in order to get his record straight?

In answer, will state that he cannot now qualify legally in the forthcoming primary election for the reason that he is not a qualified elector of Dale County or of the State of Alabama, inasmuch as he has not paid up all poll tax due by him as required by law.

Poll tax can be paid only between October 1st and February 1st. What this party should do is to pay his poll tax for the years 1919 and 1920 in Dale County unless during those years he had ceased to be a resident of Dale County, in which event, of course, it is necessary not only for him to pay up said poll tax but also to re-register.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 8, 1932

Hon. G. H. Howard,
Judge of Probate, Elmore County,
Wetumpka, Alabama.

Construction of Section 9020 of the 1923 Code of Alabama as to satisfaction of mortgage by an attorney in fact, for and on behalf of the United States of America, given as security for a loan made pursuant to Public Resolution No. 112 as amended, 71st Congress.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of January 13, 1932, to hand. You write as follows:

"We enclose herewith a copy of a power of attorney sent us by the Department of Agriculture. Please advise us if the party named therein would have authority to cancel any mortgage under this general power of attorney or would it be necessary to have a power of attorney for each mortgage separately."

You have also enclosed copy of notice to be given in each case of satisfaction.

The copy of the power of attorney is as follows:

"UNITED STATES DEPARTMENT OF AGRICULTURE.
POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

"That I, J. H. Luncy of Memphis, Tennessee have made, constituted and appointed, and by these presents do make, constitute and appoint Myrtise Collins of Wetumpka, Alabama, my true and lawful attorney, for me and in my name, to release all mortgages, accepted by the Secretary of Agriculture for and on behalf of the United States of America, given as security for loans made pursuant to Public Resolution No. 112, as amended, 71st Congress, which may be filed of record in the County of Elmore, State of Alabama, upon due notice from me of payment thereof.

J. H. Lynch,
Agent for the Secretary
of Agriculture.

"Witnesses:

"State of Tennessee)
$3
County of Shelby)

"On this 7th day of January, 1932, before me, a Notary Public in and for the said County and State, personally appeared J. H. Lynch, known to me to be, and made oath that he is, the duly authorized agent and legal representative of the Secretary of Agriculture, acting for and on behalf of the United States of America, in the execution of the foregoing instrument, and acknowledged to me that he signed and executed such instrument for the uses and purposes therein set forth.

"In witness whereof, I have hereunto set my hand and official seal the day and year in this certificate first above written.

H. C Williams,
Notary Public.
My Commission expires Oct. 20, 1935."

(SEAL)

The copy of the notice in each case is as follows:

"UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS' SEED LOAN OFFICE,
MEMPHIS, TENNESSEE.

SATISFACTION OF MORTGAGE.

"KNOW ALL MEN BY THESE PRESENTS, That the Secretary of Agriculture, for and on behalf of the United States of America, does hereby certify and acknowledge that a certain chattel mortgage, dated the ..... day of ..... 1931, made and executed by .....therein described as the mortgagor, on the crops to be grown and produced during the year 1931 upon that certain land therein described, and given to secure payment of $..... is, with the debt thereby secured, fully paid, satisfied and discharged.

"IN WITNESS WHEREOF, the Secretary of Agriculture for and on behalf of the United States of America, has caused these presents to be executed by his duly authorized agent this ..... day of ..... 19.....

SECRETARY OF AGRICULTURE
for and on behalf of the United
States of America.

By .....
Agent."

In my opinion, when the general power of attorney as shown by the copy sent has been filed for record, then, in each case where notice of

satisfaction as shown by the copy sent, is filed for record, the designated attorney in fact may cancel the mortgage named in the notice of satisfaction, on the margin of the record, as provided in Section 9020 of the 1923 Code of Alabama.

By means of this notice, when filed for record, the power of attorney for complying with said Section 9020, in each particular case, is completed.

That is evidently the understanding and intention of the Federal authorities. The notice in each case completes the authority of the attorney in fact, as to that case, when filed for record.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 9, 1932

Mr. Y. M. Quinn,
President, City Board of Education,
Russellville, Alabama.

Section 201 of the 1927 School Code, does not authorize a City Board of Education to mortgage school property, needed for school purposes, to get money to pay a debt contracted in improving such property.

Opinion by Assistant Attorney General Evans.

Dear Sir:

You make the following statement of facts:

The City Board of Education of Russellville, Franklin County, Alabama, in the year, 1931, planned and had built, under contract, a grammar school building at a price of sixty-five thousand dollars. The said Board has paid the sum of Fifty Thousand Dollars on the contrart for building; but is unable to secure the Fifteen Thousand Dollars balance, due on said contract, except by executing a mortgage on said school property to secure said sum.

You ask my opinion as to the authority of said Board to mortgage said property for such purpose. You point to Section 201 of the 1927 School Code of Alabama for your authority.

A City School Board of Education will probably be held by the Supreme Court to be a quasi corporation and an independent agency of the State for the purposes stated in Article IX of the School Code.

Kimmon v. Jefferson County Board of Education, 204 Ala. 384.

Section 201 of said Code is one of the Sections in said Article.

Section 201 of the 1927 School Code reads as follows:

> "City Board of Education May Acquire Property.—The City Board of Education shall have the full and exclusive rights within the revenue appropriated for such purposes, or accruing to the use of such public schools, to purchase real estate, furniture, appropriate libraries, fuel and supplies for the use of the schools, and to sell the same, and to make expenditures for the maintenance and repairs of the school grounds, buildings and other property, to establish and build new schools, to superintend the erection thereof, to purchase sites therefor, to make additions, alterations and repairs to the building and other property erected for school uses, and to make necessary and proper notes, contracts and agreements in relation to such matters. All such contracts shall inure to the benefit of the public schools, and any suit in law or equity brought upon them and for the recovery and protection of money and property belonging to and used by the public schools, or for damages, shall be brought by and in the name of the City."

City Boards of Education are creatures of statute solely. They have no existence or power except as provided by the Legislature. Said Section 201 first lays down the limitations within which the Board may act in exercising the powers conferred by said Section. The limitation prescribed is "within the revenue appropriated for such purposes or accruing to the use of the public schools." Money to be obtained by the execution of a mortgage of the school property, does not, in my opinion, fall within the limitation named, and was not intended by the Legislature. Such money is not revenue appropriated for such purpose or revenue accruing to the use of public schools. There is no such revenue for public schools provided by law, either as appropriated or accruing. It was the legislative purpose of said Section 201 to give a City Board of Education authority to make necessary and proper notes, contracts and agreements in the relation to the matters specified, within the revenue appropriated for the purpose or the revenue accruing to public schools for such purpose.

If it had been the legislative intent to authorize the mortgaging of school property for such purpose, it could have been done by adding one more word. The fact that the word "mortgage" was left out, shows, in my opinion, that there was no intent of conferring the power; especially, when to do so would contradict what was said in beginning fixing the limitations of action.

So far as the power to sell and the power to mortgage school property is concerned they are quite different. The power to sell was in order to dispose of property no longer needed for school purposes, while the power to mortgage might encumber property that is needed for school

purposes. The power to sell unneeded property does not include the power to mortgage property needed for school purposes.

In my opinion, "all notes, contracts and agreements in relation to such matters" must be made by a City Board of Education with reference to the "revenue appropriated for such purpose or accruing to the use of public schools," in the light of constitutional provisions on the subject.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 10, 1932

Hon. Cyrus B. Brown, Chairman,
Board of Revenue of Montgomery County,
Montgomery, Alabama.

Position of names of candidates for Party Office.

Opinion by The Attorney General.

Dear Sir:

I have your letter of even date. You inquire whether or not it is mandatory for the Probate Judge in each County to prepare ballots alternating candidates for Party Committeemen and Delegates to the National Party Convention. You direct my attention to Section 8 of an Act approved February 28, 1931.

It is true that where a Candidate for a National or State office is to be voted upon by the electors of more than one county in the State, the Probate Judge shall, as nearly as **practicable** alternate in position upon the ballots the names of the various candidates to the end that no candidate will be favored by the position of his name on the ticket. However, a Party Committeeman or a Delegate to a Party Convention is in no sense of the word a national or state officer, consequently, I advise that there is nothing in the Act to which you direct my attention, making it mandatory upon the Probate Judge to alternate the position of the names of the candidates for Party office.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 11, 1932

Hon. J. H. Hard, Jr.,
Chief Examiner of Accounts,
CAPITOL.

School warrants issued in accordance with the law, as it is and has been up to this date, by the County Board of Education, are not debts against the County within the meaning of Section 224 of the Constitution of the State of Alabama.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of February 13th, enclosing the letter of Mr. Herbert Wilson of the Brookings Institution, Washington, D. C., to Hon. Charles E. McCall, Assistant Examiner, was duly received. You ask my opinion upon the matters inquired about in said letter from Mr. Wilson. His letter reads as follows:

"I note that the Examiners of Accounts in comparing total county indebtedness against the 3½% limitation of assessed valuation do not include County Board of Education indebtedness. I wish to know whether or not the 3½% limitation applies to County Board of Education indebtedness and if not, what decision or opinion is authority for such a construction.

"I believe under decisions of the State and Federal Courts county warrants issued in anticipation of taxes are not held to be 'debt' within the meaning of the constitutional limitation. Does this exception from the limitation include all warrants, both short term and long term warrants?"

In reply will say that, in my opinion, the County Board of Education is without authority to contract or legally incur an indebtedness against the County, within the meaning of Section 224 of the State Constitution. Said County Board of Education is of statutory creation and has no authority except such as has been given it by the Legislature, and I find no authority which has been given said Board to contract debts within the meaning of said Section 224 of the Constitution of the State of Alabama.

In the case of Kimmons vs. Jefferson County Board of Education, 204 Ala. 387, brought to test the validity of certain school warrants issued by the County Board of Education, the Supreme Court of Alabama, in speaking of the power of the County Board of Education to create debts, has this to say:

"We have not here attempted to set out all the duties and functions of the county board of education, but sufficient reference has

been made to the contents of this act to disclose that this board has been given very ample power, with rather full supervision of the public school system of counties, and that the school funds are under the control of said board and placed in the custody of a treasurer selected by the board. The county board of education is given the right to sue, and the implied right to be sued, and to hold property in trust. We are of the opinion that a reading of the act will disclose that this board is in fact a quasi corporation (Askew v. Hale County, 54 Ala. 639, 25 Am. Rep. 730) and constitutes in fact an independent agency of the state for the purposes therein enumerated (Mobile County v. Kimball & Slaughter, 54 Ala. 56. This, of course, was entirely within the legislative power. State ex real Lott v. Brewer, 64 Ala. 287.

"The warrants, the issuance of which are here sought to be enjoined, do not purport to be the obligation of the county of Jefferson, nor of any particular subdivision or district of said county, but are issued solely by the county board of education, to be signed in the name of the board by its president, under the authority contained in section 7, supra, and to constitute a preferred claim upon the proceeds of the special school tax levied in said district. They contain no promise to pay, but merely an acknowledgement of indebtedness on the part of the county board of education and an order on the county treasurer of public school funds to pay the amount named therein from the special fund raised by the special tax levied and collected and to be levied and collected as therein shown. They are drawn upon and payable out of a particular fund, and payment thereof is contingent upon the sufficiency of this special fund. The holder of these warrants is not to look to the obligation of any political subdivision of the state or county, or even of the county board, but to this special fund which is to be collected under authority of the law and pledged in this manner to the payment thereof. These warrants therefore, under our decisions, are not negotiable instruments. People's Bank of Mobile v. Moore, 201 Ala. 411, 78 South. 789, and authorities there cited.

"These conclusions demonstrate, therefore, that sections 104, 222 and 224 of the Constitution have no application to the instant case, and it is not made to appear that the issuance of these warrants is violative of any constitutional provision. We do not reach a consideration of the question as to whether or not the school district referred to herein is such a district or political subdivision of the state or county, within the purview of said Section 222 of our Constitution, but the foregoing conclusion is reached, even though it should be conceded, without deciding, that such district comes within the influence of the above constitutional provision."

This, in my opinion, clearly holds that school warrants, issued in accordance with the law, do not constitute an indebtedness against the County within the meaning of Section 224 of the State Constitution. The statute on the subject has not been materially changed since said opinion

was rendered. This opinion clearly holds that school warrants issued according to the statute on the subject are not debts against the County, but mere charges against certain funds to be collected.

I know of no kind of indebtedness, which a County Board of Education is authorized to make which falls under the influence of Section 224 of the Constitution of Alabama.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 12, 1932

Hon. Hugh White, President,
Alabama Public Service Commission,
Montgomery, Alabama.

Under Motor Carrier Act of 1931, the duty of arriving accurately at the mileage covered is upon both the Commission and the transportation company; the Commission has ample authority to require additional information from the transportation company, in the Commission's effort to arrive at the mileage accurately; the Commission would not be authorized in accepting as conclusive the mileage furnished by the State Highway Department, but the Commission may use this information for whatever it may be worth; the Metric system or table governs in arriving at the mileage traveled.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I beg to acknowledge receipt of your letter of recent date, as follows:

"Re: Alabama Motor Carrier Act of 1931, section 5; Determination of Route Mileage of Motor Transportation Companies.

"The Commission requests your official opinion upon the inquiry hereafter stated:

"Under Section 5 of Alabama Motor Carrier Act of 1931, motor transportation companies therein included are required to pay to the State certain mileage taxes.

"Among the other provisions of said section is the following: 'Such motor transportation company shall pay to the Commission at the time of filing of said statement, and the Commission shall collect from such motor transportation company such mileage tax.'

"As the Commission construes this statute, it is the Commission's duty to collect such mileage tax for the State.

"The Act does not say how nor by whom the mileage of such transportation companies shall be determined. Neither the Public Service Commission nor any of its members, nor any member of its staff has any official automobile, nor has the Commission any means or method falling within any legal standard for determination of the mileage of any of such companies. As an aid to us in the performance of this duty, we have obtained from the State Highway Department its statement of the mileage of the highways within Alabama traversed by such motor transportation companies.

"Under the circumstances above stated, please advise us if the Public Service Commission may accept and use the mileage so furnished by the State Highway Department for determination of the mileage tax to be paid by these companies under said Act."

The Motor Carrier Act of 1931 imposes upon the Public Service Commission the duty of collecting the mileage tax provided by Section 5 of the said Act. Section 5 provides that every transportation company doing business in this State and subject to the control and jurisdiction of the Commission shall pay to the State as contribution to the maintenance, repair and policing of its public highways, for each mile actually operated within the State over such public highways, a mileage tax of one-fourth cent per mile on all passenger vehicles with a seating capacity of sixteen passengers or less. The Act then proceeds to enumerate the tax to be paid by other vehicles, according to a graduated scale, depending upon the seating capacity of the vehicle. The mileage tax is required in addition to all property, franchises, and other taxes, fees and charges. Based upon a construction of the Act as a whole, I don't think it can be doubted that the duty of collecting the mileage tax is imposed upon the Public Service Commission. The theory of Section 5 of the said Act is that the mileage tax may be accurately ascertained from the sworn statement which the law says the transportation company must file with the Commission, and from such other information as may be required of the transportation company by the Commission. However, situations may arise which will make it difficult for the Commission to arrive, in an accurate way, at the mileage actually traveled by the vehicle. Under the Act, the Commission has ample authority to require of the transportation company any additional information which will assist the Commission in arriving at the mileage in an accurate way. Moreover, Section 5 provides:

"Any motor transportation company failing in whole or in part to pay the mileage tax or part thereof due by it within any of the time herein prescribed for the payment of the same shall be in default and shall be liable to a penalty of twenty-five per cent of the amount of the tax."

Section 5 also provides a lien upon all the property of any transportation company that shall fail to pay the mileage tax. The Act seems to have teeth aplenty.

The duty of ascertaining the mileage accurately is not only upon the Commission but is also upon the motor transportation company. In the event the Commission is satisfied that the sworn statement is untrue, under Section 5 the Commission may require the transportation company to furnish other and additional information. If, from the sworn statement and such other and further information the Commission still believes the mileage has not been accurately computed or calculated, then the Commission may resort to such other and further reasonable and legal methods it may deem helpful in arriving at the mileage in an accurate way.

You inquire whether the Public Service Commission may accept and use mileage furnished by the State Highway Department for determination of the mileage tax to be paid by the transportation companies under the Act. The Commission is authorized to bring to its assistance any reasonable method or rule which will assist it in arriving at the mileage in an accurate way, and the Commission is authorized, in doing this, to use such information as it may be able to acquire from the State Highway Department, but in no sense would the mileage furnished by the State Highway Department be final or conclusive as regards accuracy. The acceptance of the mileage furnished by the State Highway Department would in no sense be conclusive, neither could the Commission rely implicitly on this information as protection. There is no particular sanctity, dignity or efficacy attached to the mileage furnished by the State Highway Department except that this department, by virtue of the work in which it is engaged, would probably be able to assist the Commission very materially in arriving at the mileage in an accurate way. There is no one positive, definite and conclusive rule the Commission can adopt in the matter of arriving at the mileage. The situation presents a problem which must be dealt with with just as much care as the several situations will admit of. Of course, a solution of the several problems and situations which will arise will bring about some inaccuracies as regards a correct ascertainment of the mileage, but this, in my judgment, cannot be chargeable, to lack of diligence on the part of the Commission. Some inaccuracies will of necessity arise.

In this connection, I beg to refer you to Section 3167 of Vol. 1 of the Political Code of Alabama of 1923, which section provides:

> "3167. Must conform to standard established by congress.—There is but one standard of measure of length and surface, one of weight and one of capacity throughout this state, which must be in conformity with the standard of measure of length, surface, weight, and capacity established by congress."

As regards the table or system of measurement which the Commission would be bound by in arriving at the mileage, the Commission would

be governed by Section 205 at page 451 of the United States Code Annotated, or Section 3570 of the Revised Statutes. The mileage would have to be based upon the "Measure of Length" table set out at page 452 of Title 15 of United States Code Annotated. This is known as the Metric System or Table. According to this table 10,000 meters is equivalent to 6.2137 miles. Perhaps the Commission is not interested in these refinements but it is not altogether out of place just here to call the Commission's attention to the particular table or system it will be held to in the matter of ascertaining the mileage.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 12, 1932

Hon. D. W. Crosland,
Judge of Probate,
Montgomery, Alabama.

An elector must vote in precinct or ward of his actual residence.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of March 8, 1932, in which you state:

"During the session of the Montgomery County Board of Registrars, held the latter part of 1931 and a ten day period of January, 1932, certain people were registered and qualified as voters of Precinct 11. Due to a campaign now being waged in that district for Board of Revenue, statements have been made to me that these people are not residents of Beat 11 but are actually residing in Beat 8. It is stated that they cannot even be considered as "liners" for the reason that some of their homes are approximately one mile from the line. A request has been made that I transfer these electors to Beat 8 and place their names on the poll list accordingly."

You request my opinion:

"Am I authorized under the law to make such transfer?"

I do not find that you have the authority to transfer such electors. Section 363, Code of Alabama, 1923, automatically changes the place of voting of an elector who moves from one precinct in the county to another precinct in the county, or from one ward in the city to another ward in the same city. This section is as follows:

"363. Elector changing precinct or ward.—Any elector who, within three months next preceding the date of the election at which he or she offers to vote, has removed from one precinct or ward to another precinct or ward in the same county, incorporated town or city, shall have the right to vote in the precinct from which such elector has so removed, if he or she would have been entitled to vote at such precinct but for such removal."

See also Section 176, Constitution of 1901.

Section 361, Code of Alabama, 1923, among other things, states where an elector must vote. He must have resided in the State two years, in the county one year and in the precinct or ward three months immediately preceding the election at which he offers to vote. So it is clear that one must vote in the precinct or ward or his actual residence if he has resided there for more than three months. The fact that he has registered in a precinct or ward not his residence, I do not think would prohibit him from voting in the precinct or ward of his actual residence, but certainly he must do this, he cannot vote in the precinct or ward where he registered if in fact he does not actually reside in such precinct or ward.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 14, 1932

Hon. H. J. Brogden,
Judge of Probate,
Andalusia, Covington County, Ala.

As to whether National Banks are entitled to a refund of privilege license or tax money paid probate judges for the recordation of mortgages and deeds, depends upon the facts in each case; there is finality as regards the law, but no finality as regards the facts; each bank must pursue its remedy in the courts in the manner provided by law.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I beg to acknowledge receipt of your letter of January 28th, as follows:

"On the 13th day of January, 1932, an opinion was rendered by your department to the effect that there should not be any filing tax on mortgages and deeds given to a national bank. I did not know about this opinion until January 26th, 1932, now, the First National

Bank of Opp through Hon. C. W. Mizell, President of said bank, has requested me to refund them for all filing tax that they have paid to me on deeds and mortgages during the month of January.

"Please advise me if I can refund the First National Bank of Opp for the amount of tax that they have paid to me on their papers during the month of January. I now have the money in my possession, and would be glad to refund said bank if I can legally make the refund. If I cannot refund said bank for the filing tax paid to me on the papers made to said First National Bank during the entire month of January, can I refund the bank the filing tax on the mortgages and deeds from January 13th, through January 26th, both inclusive? As Mr. Carmichael, on the 13th day of January, 1932, rendered the opinion that national banks should not pay a filing tax on deeds and mortgages made to said bank, and I did not know about this decision being rendered until January 26, 1932. Therefore, I will thank you to advise immediately whether or not I can refund the bank for mortgage and deed tax paid by said bank to me as a filing tax on mortgages and deeds made to said bank filed during the month of January. If not for the entire month, can I refund said bank for all taxes that were paid to me by said bank as a filing tax from January 13th through January 26, as your opinion was rendered on January 13th, 1932, and I collected a filing tax on the deeds and mortgages on through January 26th, due to the fact that I did not know that the opinion had been rendered.

"I will thank you to write me just as soon as convenient on this matter, you need not go to the trouble to write an opinion and cite authorities, but just drop me a letter and advise me. Your immediate attention to this matter will be highly appreciated as I have got to either refund the money to the bank by February 5th, or pay same to the State and County."

You inquire about the right of a probate judge to refund money paid by National Banks for the privilege of recording deeds and mortgages. This office, in an opinion recently handed down, held that the State was without authority to require National Banks to pay a privilege license or tax for the recordation of mortgages and deeds.

In this connection, I beg to refer you to Sections 375 and 376 of the General Acts of Alabama of 1919, at page 445. Section 375 provides:

"Section 375. Any person who through a mistake or error on the part of the judge of probate has paid to the judge of probate money that was not due from him for such license, or by such mistake has paid to the judge of probate for such license an amount in excess of that required by law for the business to be carried on by such person under the license, such person shall be entitled to have refunded to him the amount in either event so erroneously collected by the judge of probate, and the provisions of this section shall apply to

cases where money has heretofore been erroneously paid within two years before the approval of this Act."

Section 376 provides:

"Section 376. On the application of any such person, his executor, administrator, or assigns, the judge of probate for the county in which such license was taken out shall proceed to ascertain the amount due such applicant under the provisions of the preceding section, and shall grant such certificate as will enable the State Auditor and the court of county commissioners to draw his warrant, or their order, respectively, and such warrant or order shall be paid out of any moneys in the State Treasury, or the county treasury, not otherwise appropriated."

Section 375 and 376 first appeared in the General Acts of Alabama of 1887. These sections have been slightly amended since the original Act of February 28, 1887, but the sections are, substantially, the same as they were at the time of their original enactment in 1887. The sections now appear in the form just quoted, as Sections 375 and 376 of the General Acts of Alabama of 1919.

The Supreme Court of Alabama in the following cases has applied these sections to situations similar to the situation under discussion:

Blan v. Hollywood Realty Co., 218 Ala. p. 1;
Turner v. Anniston Electric & Gas. Co., 200 Ala. p. 89;
Allgood, State Auditor, v. Parker, et al, 107 So. p. 326;
Allgood, State Auditor v. Sloss-Sheffield Steel & Iron Co., 71 So. p. 784;
Lovelady, et al v. Loveman, Joseph & Loeb, 191 Ala. p. 96;
Bigbee Fertilizer Co. v. Smith, Auditor, 186 Ala. p. 552.

The question you are vitally interested in is the question of refund. Section 376 provides that the Probate Judge shall proceed to ascertain the amount due the applicant and shall grant each certificate as will enable the State Auditor and the Court of County Commissioners to draw a warrant for the money to be refunded. Sections 375 and 376 were never and are not intended to confer upon probate judges the right to determine questions of fact. These two sections apply in these cases where there is a finality as to both the law and the facts. In the case under discussion, there is a finality as to the law but there is no finality as to the facts. It is unquestionably true that the Alabama statute requiring National Banks to pay a fee for the privilege of recording mortgages and deeds is invalid, because the same is in conflict with the Federal statute, viz., Section 5219 of the Revised Statutes of the United States. So far as the recent opinion of the Attorney General on this subject is concerned, there is "finality" so far as the law is concerned, but there is no finality so far as the facts are concerned. There is finality in the matter of the law because the Supreme Court of the United States has designated the

privilege tax a general State tax for the purpose of raising revenue. The certificate mentioned in Section 376 would be applicable to a proper case, but your inquiry does not present such a case. In the event the Probate Judge should make the certificate mentioned in Section 376, would the State Auditor and the Court of County Commissioners be authorized, in law, to take as conclusive and final, both as regards the law and the facts, the matters and things set out in the certificate? Let us assume that the certificate complies with Sections 375 and 376, and, among other things, recites that the fees and taxes for the recordation of the deeds and mortgages have been paid by the National Bank in question. As to who paid the privilege license or tax would be a question of fact in each and every case. I am of the opinion that it would be impossible to lay down any general rule governing every case. It would be impossible to lay down a general rule under which the auditor and the Courts of County Commissioners or Boards of Revenue might refund these taxes to each and every National Bank involved. I am of the opinion that each bank must pursue its remedy in the manner provided by law and that each case must stand separately and be decided according to the facts of each case. In taking this position, I have the support of the Supreme Court of Alabama as set out in the case of Blan v. Hollywood Realty Co., 218 Ala. p 1. In other words, the law of the matter is settled but the facts may be different in every case. As to who paid the privilege license or tax might be a very complicated and controverted question. The bank would not, of course, be entitled to a refund in cases where the bank has loaned money and taken mortgages and where the mortgagor has paid the license fee or tax.

The several cases cited hereinabove in paragraph number five are cited for the purpose of shedding light upon the principle involved. As a matter of fact the cases cited, except the Hollywood case, are distinguishable from the instant case. The statute providing for the issuance of the certificate was never intended as so far reaching that the conclusion of the Probate Judge as regards questions of fact or law should be conclusive and final, and not subject to review by the courts. Before Sections 375 and 376 have application, a proper case must be presented.

It is, therefore, my judgment, that each and every bank must pursue its remedy separately and severally, in the manner prescribed by law.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 14, 1932

Hon. A. F. Harman,
State Superintendent of Education,
CAPITOL.

County Board of Education—employment of attorney.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of March 2, 1932 together with a letter from Hon. S. M. Tharpe, County Superintendent of Education of Baldwin County, of February 26, 1932 in which the following facts are stated: That the school finances of Baldwin County are in rather bad condition, due to the recent failure of the Baldwin County Bank. It seems probable that there may grow out of this several suits in which the county may have to take part. It is probable that the liquidation agent may contest the securities put up to secure the treasurer of school funds against loss; the bonding company will probably try to make the deposit of state warrant a special claim against the Baldwin County Bank; then, too, the tax collector and the school treasurer have a joint agreement with reference to some of these securities.

You request my opinion as to whether or not the County Board of Education can legally pay out of its funds for an attorney to aid the county in securing these funds.

I am of the opinion that if the employment of an attorney is necessary to protect the funds of the County Board of Education of Baldwin County, it may employ an attorney for this purpose. But the employment of an attorney by the County Board of Education to protect the County Treasurer of School Funds from loss on his official bond is not authorized. In other words, if the official bonds are sufficient to protect the funds and the circumstances are such that the bonds will be liable for all the loss incurred, the employment of an attorney would not be authorized. But if the official bonds would not be liable for loss or inadequate to cover same, the employment of an attorney to protect the interest of the County Board of Education would be authorized and the payment of a reasonable fee a proper charge against its funds.

Section 95 of the School Code, 1927 provides that all property, estate, funds, effects and claims of the County for school purposes shall be vested in the County Board of Education to be held in trust for the public school interests of the County or District.

Section 132 of the School Code, 1927 provides that the County Board of Education may sue and contract, which provision, of necessity, involves the liability of being sued. The authority to sue and to be sued, of necessity, carries with it the authority to employ and compensate counsel, when such Board is acting within the scope of its authority, and when counsel for such purposes has not been provided by law.—**Jack vs. Moore**, 66 Ala. 188; **Biennial Report Attorney General**, 1926-28, page 418.

However, such agents as boards of education are without authority to employ counsel in cases where counsel may by law be provided, whether by special provision by statute or by implication. The law provides instances where the Board of Education is to be advised by the Attorney General or, by possible implication, by the County Solicitor; also, where

the State is a party in interest directly or indirectly the law provides that the Solicitor and Attorney General shall prosecute or defend its interest. In such instances the Board of Education would not be authorized to employ counsel but must avail itself of the counsel provided by law.—**Biennial Report Attorney General, 1926-28, page 418, supra.**

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 17, 1932

Hon. W. E. Merrell,
President, Board of Revenue,
Columbiana, Shelby County, Alabama.

(1) The fact that approximately $50,000 of the amount borrowed for any one year is secured by warrants pledging the current year's taxes as collateral, is no reason for deducting this amount when arriving at the constitutional debt limit.

(2) The amount required to be placed in the sinking fund each year to take care of the $375,000 bonded indebtedness can not be deducted from the total indebtedness to bring the amount within the constitutional limit.

(3) If a county is above the constitutional debt limit it cannot legally continue to make voluntary appropriations for any calendar year as long as this condition exists.

(4) If a county is above its constitutional limit it is without authority to make appropriations for any voluntary purpose. A resolution by the board of revenue or commissioners court to the contrary notwithstanding.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of September 28, 1931, in which you request my opinion as follows:

"For several years, at our regular October session, we have made appropriations for the ensuing calendar year in the sum of Three Thousand Dollars to the Health Unit-Child Welfare Department and Two Thousand Dollars to the Farm Demonstration Agent.

"Our tax valuation is approximately Twelve Million Dollars, our debt limit of 3½% of this amount as provided in the Constitution being $420,000.00, and our outstanding obligations are as follows:

"Bond Issue of 1923	$375,000.00
Borrowed from Bank	70,338.00
Ordinary Warrants	4,378.00
Total Indebtedness	$449,716.00

"To redeem the above bond issue at maturity there is being deposited in a sinking fund the sum of $6,000.00 per year, this sinking fund, principal and interest, amounting to about $60,000.00.

"Your opinion is respectfully requested upon the following:

"(1) In view of the fact that approximately $50,000.00 of the amount borrowed is secured by warrants pledging the current year's taxes as collateral, should not that amount be deducted when arriving at our constitutional debt limit?

"(2) The sinking fund having been invested in securities sanctioned by law, to be used in redeeming the $375,000.00 bond issue when it matures, should not this amount be deducted from our total indebtedness?

"(3) In the event that our indebtedness exceeds the constitutional limit, may we legally continue to make the **voluntary** appropriations above referred to, for the calendar year 1932?

"(4) In the event that our indebtedness exceeds the constitutional limit, may we continue the appropriations for the remaining months of the current year, in accordance with the resolution authorizing their payment as adopted at the October sessions of 1930?

In answering your inquiries I am not attempting to determine whether or not your County is above or below the constitutional limit. This is a matter for the constituted authorities of your County to decide. I first call your attention to Section 224 of the Constitution of 1901, which is as follows:

"Sec. 224. No county shall become indebted in an amount including present indebtedness, greater than three and one-half per centum of the assessed value of the property therein; provided, this limitation shall not affect any existing indebtedness in excess of such three and one-half per centum, which has already been created or authorized by existing law to be created; provided, that any county which has already incurred a debt exceeding three and one-half per centum of the assessed value of the property therein shall be authorized to incur an indebtedness of one and a half per centum of the assessed value of such property in addition to the debt already existing. Nothing herein contained shall prevent any county from issuing bonds, or other obligations, to fund or refund any indebtedness now existing or authorized by existing laws to be created."

This Section of the Constitution draws the dead line as to the indebtedness of the various counties of the State, and in determining whether or not a County is above the constitutional limit it must be strictly followed.

You desire to know whether or not in figuring up your indebtedness you should include the sum of $6,000.00 per year that you are required to place in a sinking fund to take care of the bonded indebtedness of your County which falls due and must be paid at a stated time in the future.

It is my opinion that in fixing the actual indebtedness of your County you are compelled to charge this on the debit side of the ledger. It is true your bonded indebtedness does not fall due for some years yet, but notwithstanding this, the County is required to set aside each year a certain amount which goes into a sinking fund to take care of this bonded indebtedness at maturity. It is further true that the money is deposited or invested for the payment of said indebtedness when due. But the depositing of it or investing it is not payment and the debt remains outstanding just the same until properly discharged by payment and cancellation. For instance, if it is invested in bonds or securities the concerns holding your bonds which represent your bonded indebtedness are not looking to these securities for payment of their indebtedness. They are not interested in them and it is Shelby County and Shelby County alone, which must pay at maturity. Therefore, I hold that this fund, known as the sinking fund, must be included in arriving at the County's true indebtedness, until this bonded indebtedness has been actually paid and the obligation discharged.

Biennial Report of Attorney General, 1928-30, page 31, and authorities cited.

Therefore it is my opinion, based on the authority of the case of Brown, Treasurer, vs. Gay-Padgett Hdw. Co., 188 Ala. 423, that if you have reached or you are above your constitutional debt limit, you are restricted in your operations by the limitations prescribed in the case, supra, in which among other things, Justice Somerville lays down the following prescribed rule governing all claims against the County:

"Legitimate county debts or obligations are of two classes: (1) Those which are prescribed and imposed by law, and are purely involuntary as to the county; (2) those which are merely authorized by law, and are assumed by the county with some measure of discretion, at least as to time and amount.

"Section 153 of the Code (1907) makes a number of specified county obligations preferred claims against the general treasury, and requires the treasurer to set aside sufficient funds for their payment. We think also that, by necessary implication, whenever the assessed revenues of an overburdened county are not sufficient for the payment of all current county obligations, those involuntary obligations

which are fixed and imposed by law must be regarded as preferred claims of a second class, which are entitled to precedence over the general voluntary obligations of the county."

Then summing up, the learned Judge states his final conclusion as follows:

"As a result of the foregoing considerations, we hold that a county which is indebted up to the constitutional limit may nevertheless appropriate its anticipated revenues actually assessed for the payment of its **ordinary current obligations incurred during and** for the year for which such revenues are assessed and payable; that the obligations absolutely fixed by law are preferred **claims**; and that all voluntary obligations assumed or incurred after the exhaustion of the full amount of revenues on hand **or in valid expectancy are debts which are repugnant to the Constitution and are therefore invalid as to their payment.**"

Therefore in answering your inquiries numbering from one to four, both inclusive, my answer is in the negative.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 26, 1932

Hon. Pete B. Jarman, Jr.,
Secretary of State,
CAPITOL.

1. The order in which the names of candidates for office shall be certified to the judges of probate of the several counties by the Secretary of State is not provided by the law. The usual alphabetical arrangement for each office is, in my judgment, the least confusing to the Judge of Probate.

2. When the Judge of Probate receives the certificate of the Secretary of State, he should, as far as practicable, conform to the proviso in Section 8 of Act No. 56, approved February 25, 1931 (Acts 1931, pages 75 and 76)

Opinion by Assistant Attorney General Evans.

Dear Sir:

I have your letter of March 15th. You ask my opinion as to in what order the names of candidates should be certified by you, as Secretary of State, to the Judges of Probate of the several counties of the State, and how the names should be placed by the Judges of Probate upon the ballots.

The answer to the matters inquired of by you is provided by Section 8 of Act No. 56, approved February 25, 1931 (Acts 1931, pages 75 and 76). On examination of this Section you will find that the order in which the names shall be certified by the Secretary of State to the Probate Judges is not provided by law. This is left to the judgment and convenience of the Secretary of State. Nor is it the duty or prerogative of the Secretary of State to instruct the Judges of Probate as to in what order the Judges of Probate shall have the names of candidates printed on the ballots. The statute itself provides the manner in which Judges of Probate shall have the names of opposing candidates for any national or State office, to be voted for by the voters of more than one County, placed upon the ballot. As to all other candidates than the ones just mentioned the judges of probate may place them as has heretofore been the custom. In said Section 8 we find the following as to the candidates named.

> "Provided, that the Probate Judge shall have said ballots so printed that the names of the opposing candidates for any national or state office to be voted for by the voters of more than one county shall, as far as practicable, alternate in position upon the ballots to the end that the name of each candidate shall occupy with reference to the name of each other candidate for the same office, first position, second position, and every other position, if any, upon an equal number of ballots, and, when printed, said ballots shall be distributed impartially and without discrimination by the Probate Judge."

The foregoing has no reference to the order in which the names of candidates should be certified by the Secretary of State to the Judge of Probate. It refers only to the duty of the Judge of Probate, in arranging the names on the ticket, after he has received the certificate from the Secretary of State. For the Secretary of State to arrange the names of opposing candidates for an office, on his certificate to the Probate Judge otherwise than alphabetically, would, in my opinion, be confusing to the Judge of Probate in arranging the names on the ticket as directed in said proviso.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 26, 1932

Hon. Pete B. Jarman, Jr.,
Secretary of State,
CAPITOL.

Secretary of State without authority to certify name of person who fails to comply with Section 588 of the Corrupt Practice Act.

Opinion by the Attorney General.

Dear Sir:

You state that you have been requested by Mr. Thos. H. Maxwell to certify to the Probate Judges for the Sixth Congressional District, his name as a candidate for Congress from that District. You advise me that on March 10th Mr. Maxwell filed with you his declaration of candidacy and his appointment of a campaign committee as provided by Section 588 of the Code of 1923. You also state that Mr. Maxwell on or by March 1st qualified with the Chairman of the State Democratic Executive Committee by posting the amount assessed candidates for office in the party primary by the party executive committee, at that time declaring himself to be a candidate for Congress from the Sixth Congressional District.

You inquire whether or not you are authorized to certify the said Thos. H. Maxwell's name to the various Judges of Probate of the Congressional District, that the same may be placed on the ballot.

This is to advise you that you are without authority to certify the name of any person who has not complied with the provisions of the Corrupt Practice Act, and in the instant case, the facts stated clearly show that Mr. Maxwell has not complied with the Corrupt Practice Act.

Your authority in the premises is circumscribed by Section 590 of the Code of 1923 and Section 589 of the Code of 1923. The question of certifying Mr. Maxwell's name is one beyond your control.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

March 28, 1932

Mrs. A. M. Tunstall, Director,
Child Welfare Department,
CAPITOL.

The words "any proper adult person, or husband and wife jointly," as used in the Act approved July 17, 1931, amending Section 9302 of the Code of 1923, providing a mode of adopting minor children, does not require both husband and wife to adopt, but permits both to join in the adoption.

Opinion by Assistant Attorney General Moore.

Dear Mrs. Tunstall:

I have your letter of February 29th, in which you state:

"Hon. Price Williams, Judge of Probate, Mobile County, and Mr. Harry H. Smith, Attorney at Law, Mobile, have asked that we request

an opinion from your office concerning section 9302 of the Adoption Law of Alabama.

"The law Reads:

"'Any proper adult person, or husband and wife jointly, may petition the probate court of the county in which he or they have a legal residence, or of the county in which the child resides, or of the county in which the child had legal residence when it became a public charge or of the county in which is located any agency or institution, operating under the laws of this State, having guardianship and custody of the child, for leave to adopt a child and for a change in the name of such child.'

"It is the desire of this office, which has supervision of all adoption cases in this State, as well as the wish of the above mentioned men, who are interested in a particular case now before the Court of Mobile, to know whether a wife or a husband may **separately** petition a Court to adopt a child or whether it is necessary for both husband and wife **jointly** to petition for the adoption."

In reply I beg to advise that Section 1 of the Act approved July 17, 1931, amending Section 9302 of the Code of Alabama provides that "any proper adult person, or husband and wife jointly, may petition the probate court of the county, etc."

You request me to advise you whether a husband or a wife may separately petition a court to adopt a child, or whether it is necessary for both husband and wife to join in the petition for adoption.

In my opinion, either the husband or wife may petition the probate court without the other joining, though if both are desirous of adopting the child, the law allows them to join. I think the language of the statute clearly indicates this. It provides that any proper adult person may do so. Without further words, this would authorize any proper single person, or any proper married person to petition; but, in order that married persons, if they desire, may have the right to jointly adopt, the words "or husband and wife jointly" were inserted, in my opinion to give authorization for such joint adoption but not to exclude the adoption of a minor by either party.

The law is laid down in 1 Corpus Juris, page 375, as follows:

"In the absence of any express statutory provision to the contrary, either spouse may adopt a child without the other joining, in which case, the adoption creates no relation as between the child and the spouse who does not join."

This rule was laid down in Barnhizel vs. Ferrel, 46 Ind. 335. Certainly, there is no statutory mandate in the language above, expressly declaring that both husband and wife **must** join in order to make an adoption legal where the parties are married persons.

This seems to me, moreover, the reasonable construction of the statute. Otherwise, under the law, we might have the very anomalous situation of a bachelor adopting a girl, or a bachelor-maid adopting a boy where there is no great disparity of ages between the person making the adoption and the minor, and where the persons making the adoption have not homes or other suitable places for the keeping and rearing of the minor; while, on the other hand, a married person, with suitable means and accommodations, would be prohibited from adopting a child because the other party to the marriage is insane, absent from the state, or by virtue of some entailed property interest, is unable to join. While due to the confidence I have in the wisdom of our Probate Judges and in the painstaking investigation and careful scrutiny your department gives to these petitions, I do not anticipate a "peaches Browning" affair in Alabama, yet such might be possible under the law, while if a strained construction were put on the words "husband and wife jointly," a child would be prohibited from entering a suitable home, because of the failure of one of the parties to join in the adoption.

It is unnecessary to call to your attention the purpose of the adoption statutes as well as the general law relating to minors. The rule was laid down in Parsons vs. Parsons, 101 Wis. p. 76, as follows:

> "The adoption statutes is a humane provision which looks to the interest of children primarily. That is its controlling idea and policy. Therefore every reasonable intendment should be indulged in, in case of doubt, in the line of promoting that object . . . . . That the statute was designed to enable those who are not blessed with the love and society of children in the family to acquire it by taking them into the family fold and giving a home to those in need of such shelter, protection and care, thus creating mutual obligations, promotive of mutual happiness and the moral well-being of society, is most clear. It has made, and is making, a multitude of happy homes, happy parents, happy children, and valuable members of society, **and no narrow construction should be indulged in that would tend to defeat a result so obviously intended and in every way so beneficial.**"

As I construe the Act in entirety, the matter of adoption is a matter of judicial ascertainment and discretion. It is the duty of the Judge of Probate to examine the evidence, and if the statutory requirements as to jurisdiction etc., are complied with, and in his opinion, the best interests of the child will be served by granting the petition, then he should do so.

The responsibility is his, and in passing on an adoption petition, he acts judicially and must consider all the evidence and circumstances produced in support of or against it.

Furthermore, it appears that the conclusion reached above is in harmony with Section 9300 of the Code, providing the method for making illegitimate children, legitimate.

It is therefore my conclusion that if the Court is of the opinion that the best interests of the child will be served by allowing either husband or wife, without the other joining, to adopt a child, then there is nothing in the statute expressly forbidding him from so doing.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 1, 1932

Hon. Hugh White, President,
Alabama Public Service Commission,
Montgomery, Alabama.

Alabama Public Service Commission without jurisdiction and authority to require the elimination of radio interference by requiring electric utilities to remove transmission lines adjacent to stores and residences; such matters must be decided in the courts and not by the Public Service Commission.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your letter of January 27th has been received. Your letter follows:

"The Commission has had several complaints filed with it, asking that electric utilities engaged in the supply of electric energy to residences and stores for lighting and power purposes, and having transmission lines located near or adjacent to stores and residences, be required to eliminate interference caused by said transmission lines to radio reception in homes and stores located along the route of said transmission lines, by requiring such utilities to move their transmission lines from the streets and roads where the interference is caused.

"Your opinion is requested as to our jurisdiction and authority to require the elimination of such interference by the removal of such transmission lines."

You inquire whether the Alabama Public Service Commission has jurisdiction and authority to require the elimination of radio interference by the removal of transmission lines of a public utility. The question resolves itself into a question of the extent of the power or jurisdiction of the Alabama Public Service Commission. Does the Commission have jurisdiction over such a public utility in a way that allows the Commission to adjudicate and settle differences between a utility and an individual or individuals? In answering your question, perhaps it would be

helpful to review the statute law in the State of Alabama in order to ascertain just what authority the Legislature has delegated to the Public Service Commission. It will also be helpful to review the Alabama authorities construing these statutes, the authorities of other states construing similar statutes and the Public Utilities Reports of the several states.

Sections 9631, 9632, 9633, 9741, 9744, 9757, 9769, 9770, 9777, 9781, 9782, 9783, 9813 and 9826 of the Code of Alabama of 1923, constitute, in the main, the statutory authority and power of the Alabama Public Service Commission to regulate public utilities known as electric companies or corporations. The sections just referred to provide for general jurisdiction and supervision by the Commission over the rates, service, regulations, financing, issuance of securities, sale of properties, accounts, adequacy of plants, properties, equipment and facility for service, of every electric company operating in the State of Alabama.

In the case of Alabama Great Southern Railroad Co., vs. Alabama Public Service Commission, 210 Ala. p. 151 (97 So. 226, Public Utilities Reports 1924 A. p. 477), the Supreme Court of Alabama holds that the Public Service Commission is a statutory creation, is granted authority in derogation of common-law rights, and has only such authority as is clearly granted to it upon a strict construction of the statute.

In the case of Alabama Public Service Commission, et al. vs. L. & N. R. R. Co., 206 Ala. p. 326 (89 So. p. 524) the Supreme Court of Alabama holds that the Public Service Commission exercises a limited statutory jurisdiction and that a court of equity may enjoin the enforcement of its orders when such orders are in excess of its jurisdiction, or when such orders are unreasonable or unjust; and to the like effect in the case of Nashville, Chattanooga & St. Louis Ry. Co. vs. the State, 137 Ala. 439.

In the case of Railroad Commission vs. Alabama Northern Railroad Co., 182 Ala. p. 357, the Supreme Court of Alabama holds that the Legislature has the power to create a railroad commission and direct it to exercise its power of regulation over railroads and other public service corporations; but that this power is subject to the limitation that the commission cannot be invested with strictly legislative or judicial powers.

In the case of Ex Parte City of Birmingham, 199 Ala. p. 9, the Supreme Court of Alabama holds that the Public Service Commission exercises in some instances quasi judicial powers, but that question which the Commission has been given no statutory authority to adjudicate must be tried out in the courts; that a public service commission does not enforce rights or redress wrongs, but is only authorized to ascertain a fact upon which a statutory license depends.

In the case of Compton vs. Alabama Power Co., 216 Ala. p. 558, the Supreme Court of Alabama holds that it is beyond the power of the Alabama Public Service Commission to make rules dealing with matters of liability or to prescribe rules of substantive law.

The principle is well stated on page 10 of Volume 51, Corpus Juris; in the following words:

> "Limitations on Power Regulation. The power of the state to regulate the conduct and business of public utilities is limited by the consideration that it is not the owner of the property of the utility, nor clothed with the general power of management incident to ownership, the private right of ownership of such property remaining and not being destroyed by the regulatory power. Accordingly, a utility may be controlled in the use of its property only so far as may be necessary to secure the proper discharge of the duties which it owes to individuals or to the public. Regulation must not be so far extended as to constitute management or operation, and the right of a utility honestly and in good faith to carry on its business and direct its affairs may not be wrested from it under the guise of regulation. . ."

Again the principle is well stated on page 39 of Corpus Juris in the following words:

> ". . . . The power of the commission does not extend, however, to acts of a utility not affecting its public duties; its jurisdiction is limited to matters or controversies wherein the rights of a utility and the public are involved, and it has no power to adjudicate purely private matters between a utility and an individual. . . . ."

The case of C. E. Fields, et al. vs. Skamania Light & Power Co., Public Utility Reports, 1926-B, p. 721, presents a case very much like the case presented by your inquiry. In the Fields case the Public Service Commission of Oregon holds that the repair and construction of a defective plant and equipment of an electric light and power company will not be required merely upon the possibility that the removal of the defects may improve radio reception.

In re Public Service Company of Northern Illinois, Public Utilities Reports, 1929-A, p. 352, the Illinois Commerce Commission holds that the question of compensation for damages occasioned by the necessity of relocating a telephone line belonging to a private industry, in order to avoid inductive interference from a proposed power line, was a question of private property not directly affecting the public and not a matter within the jurisdiction of the Commission.

In the case of Chas. E. Roesch, Mayor of the City of Buffalo vs. New York Central Railroad Co., the New York Department of Public Service holds that the Commission has no jurisdiction over a complaint against an alleged nuisance by a railroad by reason of emission of smoke from engines, shunting and switching of freight cars, and the method of handling freight cars loaded with livestock.

On the question of jurisdiction of public service commissions, in the case of John Eadych, et als., vs. Chicago, Milwaukee, St. Paul & Pacific R. R. Co., et als., Public Utilities Reports, 1931-A, p. 236, the Wisconsin Commission holds that it has no jurisdiction to make an award for damages to property adjoining a point where a spur track is constructed on private rights of way, nor has it power to determine the rights of the parties to the controversy.

The Pennsylvania Public Service Commission, in the case of G. E. Delong, et als., vs. Lehigh Valley Railroad Company, (Public Utilities Reports, 1927-B, p. 982) on the subject of jurisdiction of public service commissions, holds that the Pennsylvania Public Service Commission has no power to order a railroad company to abate unnecessary smoke and noise in the operation of railroad locomotives on account of annoyance of citizens residing in the vicinity of a station and tracks.

On the subject of jurisdiction, the Wisconsin Railroad Commission, at page 174, 1915-A, Public Utilities Reports, holds that the Commission has no jurisdiction to order the removal of a high tension transmission line from the vicinity of a telephone line of earlier construction.

On the subject of jurisdiction, the Oklahoma Supreme Court 225 p. 708, Public Utilities Reports, 1924-E, p. 783, in discussing the jurisdiction of the Oklahoma Corporation Commission holds that:

> "The jurisdiction of the Corporation Commission is limited to construing controversies wherein the rights of a public utility and the patrons thereof are involved. It has no jurisdiction to adjudicate differences between private litigants or purely private matters between a utility and a citizen."

The Public Service Commission of the State of Missouri, has also passed on the question of jurisdiction and holds that the Commission does not have jurisdiction of a complaint against a structure of a public utility company involving matters of possible damage or aesthetic repulsion because such structure does not conform to the general architectural standard of surrounding property.—George C. Croner, et al. vs. Kansas City Public Service Commission, et als., Public Utilities Reports, 1931-B, p. 213.

The West Virginia Supreme Court, in the case of City of Bluefield vs. Public Service Commission, et als., 118 S. E. p. 542 (Public Utilities Reports 1924-A, p. 158) holds that a public service commission does not have jurisdiction, on the petition of a city to compel a water company and an electric railway company using the streets under franchises from the city for their respective purposes, to order them to improve their respective plants or so operate them as to prevent damage to the streets, because these questions do not involve the adequacy of the service or reasonableness or justness of the rates or tolls charged.

In the State of Illinois, the Public Service Commission has ruled that the Illinois Commission has no jurisdiction over a complaint that a railway stores cars on a switch track to the detriment and injury of adjoining real estate.—Public Utilities Report, 1922-A, p. 368.

In passing on the question of jurisdiction, the Public Service Commission of the State of Colorado holds that the Commission has no jurisdiction to order repair or improvements in a water main pipe except upon complaint of a patron to the utility that the leaks are responsible for an inadequate, insufficient or impure supply of water.—Chas. W. Taylor, et. al. vs. City of Glenwood Springs, et al., Public Utilities Reports of 1921-E, p. 526.

On the question of jurisdiction, the Washington State Public Service Commission holds that the Commission has no jurisdiction to order the removal of a water main from a street, or to order the laying of a metal pipe in its place, unless such change is necessary to enable the company to render safe, adequate, and efficient service at a reasonable cost to its patrons.—City of Yakima vs. Pacific Water and Light Co., Public Utilities Reports, 1921-C, p. 730.

And the Nebraska State Railway Commission, passing on the question of jurisdiction, holds that the Nebraska Commission has no power to require the construction of a railroad bridge, merely because it is so constructed as to cause the flooding of adjacent property, there being no question as to the safety or sufficiency of the bridge in the service that the railroad renders as a common carrier.—Public Utilities Reports, 1920-D, p. 510, the style of the case being Western Sarpy Drainage District vs. Chicago, Burlington & Quincy Railroad Company.

The Massachusetts Public Service Commission, in passing on the question of jurisdiction, holds that the Commission has no jurisdiction of a complaint against the unloading of ice from railroad cars in a residential district, where the objection is based merely upon the noise caused thereby, or upon the use of loud and profane language during the period of unloading. Re R. E. Brierley.—Public Utilities Reports, 1918-D, p. 499.

The Iowa Board of Railroad Commissioners, in passing on the question of jurisdiction of the Commission, holds that the Commission has no jurisdiction to require a railroad to alter its road to relieve landowners from damage caused by flood waters, since the Commission's authority over the construction and maintenance of a railroad and to require a railroad company to comply with the laws of the State, is confined to such supervision as concerns the security, convenience, and accommodation of the public using the road for transportation purposes.—Jerry Brosnan vs. Chicago, Rock Island & Pacific Ry. Company, Public Utilities Reports, 1917-F, p. 584.

In another case in which the Iowa Board of Railroad Commissioners passes on the question of jurisdiction, it is pointed out that the Iowa Com-

mission is without authority to make an order requiring a railroad company to reconstruct its tracks so as to provide sufficient drainage for surface water.—P. H. Cragan vs. Chicago, Rock Island & Pacific Ry. Commission, Public Utilities Reports, 1918-C, p. 52.

The New Jersey Board of Public Utilities Commissioners, in a case involving the jurisdiction of the Commission, holds that the question of the right of a utility to maintain poles in front of private property is not one within the jurisdiction of the New Jersey Commission.—James T. Ackerman vs. Public Service Electric Co., Public Utilities Reports, 1918-A, p. 583.

The New York Public Service Commission, in passing on a question involving jurisdiction, holds the Commission has no jurisdiction to compel a railroad company to widen a culvert so as to prevent the flooding of adjacent land, since the public interest, so far as concerns the facilities of the railroad for rendering service, is not involved.—Village of Middleport vs. New York Central Railroad Co., Public Utilities Reports, 1919-B p. 69.

The above includes a review of a cross-section of the country on the subject of the jurisdiction of public service commissions over public utilities. In my judgment, the Alabama Public Service Commission is without authority to require electric utilities to eliminate radio interference caused by transmission lines of such utilities, such lines being located near or adjacent to stores and residences. Such matters are beyond the jurisdiction of the Commission. The Public Service Commission does not exist for the purpose of settling or adjudicating the equities or rights of parties in such matters. Such matters must be settled in the courts and not by the Public Service Commission. Our courts exist for the purpose of settling such disputes and controversies. The Public Service Commission does not exist for such purposes. I am convinced that the Commission is without jurisdiction and authority to require the elimination of such interference by the removal of such transmission lines.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 4, 1932

Hon. C. D. Adkins,
Judge of Probate,
Ashville, Alabama.

Elections—qualifications of candidates before placing them on ballot.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of March 23, 1932, in which you state that the Chairman of the Democratic Executive Committee of your county filed a list of names of candidates for the various county offices, together with their certificates of qualifications, to be voted on in the primary election to be held May 3, 1932. You further state that among the list of names filed are candidates who have not filed their certificates in this office after the announcement of his candidacy as required by Sections 588-9, Code of Alabama, 1923.

You request my opinion:

1. Should you place on the ballots the names of such candidates who have not filed their qualifications as required by Sections 588-9, Code of Alabama, 1923?

2. Should you place on the ballots the names of any candidate for County Superintendent of Education, who has not filed a certificate certifying his qualification as provided in Article VII, Section 140 and Section 141 of the Alabama School Code of 1927?

I am of the opinion that your first question should be answered in the negative. Section 588, Code of Alabama, 1923, provides for the filing of a certain certificate within five days after announcement of his candidacy.

Section 589 specifically provides that the failure to make declaration of his appointment or selection by any candidate as herein required is corrupt practice and in addition, the name of such candidate shall not be allowed to go on the ballot.

I am of the opinion that your second inquiry also should be answered in the negative. Section 140, School Code, 1927, provides that before any person shall qualify as a candidate for or for the nomination of a political party as a candidate for the office of County Superintendent of Education, such person shall have filed with the Judge of Probate a certificate signed by the State Superintendent of Education that such person holds a certificate of administration and supervision as required by law. Section 141 further provides that if any person, whose name has not been filed, is placed on the ballot, the Judge of Probate placing said name on the ballot subjects himself to a penalty of $250.00.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 6, 1932

Mr. T. P. Tompkins, Clerk,
Probate Court, Russell County,
Girard, Alabama.

1. The right and duty of the Probate Judge to purchase, for the use of his office, suitable books, stationery and postage stamps, to be used exclusively for his office, to be paid for by the County, and the right and duty of the Court of County Commissioners, Board of Revenue, or other like governing body, to examine the account and purchase and approve or disapprove such purchase and account, is governed by Act No. 595, approved September 6th, 1927, (Acts 1927, page 693).

2. There is no authority for a Court of County Commissioners, Board of Revenue, or other like governing body, to purchase suitable books, stationery or postage stamps for the office of Judge of Probate.

3. It was not the legislative intent, in passing said Act No. 595, to put the duty of purchasing and the duty of approval of the purchase as being necessary, in the same hands. The power and authority given to each should be exercised so as to expedite the business of the County and of the people of the County; but without undue expense to the taxpayers of the County.

4. The passage and approval of Local Act No. 204, approved May 26th, 1931, in no way affected or repealed said Act No. 595 as to Russell County. Said Local Act, so far as said Act No. 595 is concerned, simply created another "like governing body", invested by said Act No. 595 with the same duty and authority with Courts of County Commissioners, etc.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Receipt of your letter of February 10th is acknowledged. You ask my opinion as to whether or not the Probate Judge can purchase the necessary supplies for his office without authority of the Board of Roads and Revenue of Russell County.

In reply will say that the proper answer to your inquiry depends upon the proper construction of Act No. 595, approved September 6th, 1927 (Acts 1927, page 693). This Act is an amendment of Section 9604 of the 1923 Code of Alabama. Section 9604, of the 1923 Code of Alabama reads as follows:

"The judge of probate must be allowed reasonable expenses for suitable books, stationery, postage stamps used exclusively for official business, telephones, and a seal of office, to be paid by the county."

Act No. 595, amending this Section reads as follows:

"That Section 9604 of the Code of Alabama of 1923 be and the same is hereby amended to read as follows: (9604. Stationery of officers paid for by county.—The Judge of Probate, Tax Assessor, Tax Collector, Register of the Circuit Court in Equity, Clerk of the Circuit Court, Sheriff and the County Treasurer or custodian must be allowed reasonable expenses, for suitable books, stationery, postage stamps used exclusively for official business, and telephones to be paid for by the county, on the approval of the Court of County Commissioners, Board of Revenue or other like governing body, and the Judge of Probate shall also be allowed expenses for his seal of office, to be paid for by the county."

It will be seen that the only changes made in the law by the amending Act was, first, to include with Judge of Probate, the "Tax Assessor, Tax Collector, Register of the Circuit Court in Equity, Clerk of the Circuit Court, Sheriff and the County Treasurer or Custodian;" and, second, to provide that the supplies named be paid for by the County "on the approval of the Court of County Commissioners, Board of Revenue, or other like governing body."

It will be seen from an examination of said Section 9604 of the Code and amending Act No. 595, that no change was made in the law as to who should do the purchasing; but quite a change was made as to the authority and duty of the Court of County Commissioners or other like governing body, in the matter of the County paying the account for such supplies when contracted.

Under Section 9604 of the 1923 Code, the duty of such Board was purely ministerial and was confined to the account as made by the Judge of Probate; whereas, by said Act No. 595, the Court of County Commissioners is given a quasi judicial authority in determining what are reasonable expenses for suitable books, stationery and postage stamps used exclusively for official business.

In my opinion, no authority for purchasing such supplies has been conferred upon the Court of County Commissioners, or other like governing body. The authority to purchase is where it has been for many years; but the authority of approval by the Court of County Commissioners, or other like governing body, was changed. Before the approval of Act No. 595, the duty of the Court of County Commissioners, or other like governing body, as to such an account, when presented for approval, was purely ministerial.—Mobile County v. Williams, Judge, 180 Ala. 647. It was confined to the matter of seeing that the account presented was correct in amount according to contract by the Judge of Probate and that no items were charged which the Judge of Probate had no authority to charge against the County.

By the enactment of said Act No. 595, the Court of County Commissioners, or other like governing body, is invested with quasi judicial power

in passing upon such an expenditure as to whether or not such expenditure was reasonable and necessary. Such an account is "to be paid for by the County on the approval of the Court of County Commissioners, Board of Revenue or other like governing body." In Russell County the Board of Roads and Revenue is a "like governing body." In my opinion, after examining Local Act No. 204, approved May 26th, 1931, the passage and approval of this Act in no way modified said Act No. 595, or changed the duty or authority of the governing body of the County.

In my opinion, the Board of Roads and Revenue of Russell County has no authority to purchase books, stationery, or postage stamps for the office of Probate Judge. This authority is in the hands of the Judge of Probate. The payment by the County for such supplies, when purchased, is subject to approval by such Board. As said in the case of State Board of Administration vs. Roquemore, 218 Ala. 124, Section 8: "But, even where the officer has some discretion in reaching the conclusion upon which it is his duty to act, if there is a palpable abuse of his discretion, and no other remedy for its correction, mandamus will lie."

In the case under consideration, it is the duty of the Board of Roads and Revenue of Russell County to approve an account made by the Judge of Probate for suitable books, stationery or postage stamps used exclusively for official business, where such supplies were necessary for the proper conduct of the office and the price agreed to be paid was reasonable. For the Board to refuse to approve the payment of such an account, when such facts are clearly shown, would, in my opinion, be an abuse of the discretion vested in it by said Act No. 595.

On the other hand, if, in its opinion, there was more purchased than was reasonably necessary, or a more expensive grade than was reasonable, or the price agreed to be paid was not reasonable, then, in my opinion, it becomes the duty of the Board not to approve the payment.

Of course, it would be best if the amount, grade and price could be agreed on in advance, where there is a probability of trouble as to the matter of approval, as the Court or Board has power in that respect, which it should exert in proper cases, for the protection of the taxpayers of the County.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 7, 1932

Hon. John Brandon,
State Auditor,
CAPITOL.

License Tax Refund—conclusiveness of certificate of Judge of Probate.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of March 17, 1932, in which you state that on February 19, 1932, Judge W. W. Brandon, Judge of Probate of Tuscaloosa County, submitted an application for a refund of a license that was taken out by Montgomery-Ward & Company, under Schedule 1, Section 361, Revenue Act, 1919, which was a license for a closing-out sale.

Judge Brandon raised the question as to whether or not the State Auditor has the authority to question the merits of a refund after the proper official has certified that the licenes was taken out in error. He states that the duty of the State Auditor is entirely ministerial in the case, and cites Allgood, State Auditor, v. Parker, 107 So. 326, and Lovelady et al. v. Loveman, Joseph & Loeb, 68 So. 48.

You request my opinion as follows:

1. If a business firm advertises a sale as a "closing-out sale," are they required to take out a license as provided by Revenue Act 1919?

2. Has the State Auditor the authority to refuse a claim for a refund of a license when said license was taken out under a given section of the law that requires a firm to take out a license to engage in a certain business?

I am of the opinion that your first question should be answered in the affirmative.—**Biennial Report Attorney General**, 1926-1928, pages 65, 400, 662.

I am of the opinion that your second question also should be answered in the affirmative.

The rules as laid down in the cases cited by Judge Brandon, that is Allgood, State Auditor, v. Parker, and Lovelady et al. v. Loveman, Joseph & Loeb, supra, have been later explained and clarified in the cases of Board of Revenue of Montgomery County v. So. Bell Tel. and Tel. Co., 200 Ala. 532, 76 So. 858, and Blan, State Auditor, v. Hollywood Realty Company, 218 Ala. 1, 118 So. 257. The rule as laid down in those cases, is that when a proper certificate by the Judge of Probate for a refund of a

license paid in error, is presented, the Board of Revenue or Auditor, as the case may be, has no discretion in the matter if the certificate involved a finding authorized by statute; but only such certificates as are authorized by statute are conclusive and not one certifying that a tax was or was not governed by an Act when it showed on its face to the contrary.

Therefore, in my opinion, if the certificate of the Judge of Probate was a certificate involving a finding authorized by statute, then such certificate would be conclusive and you would have no discretion in the matter; but on the other hand, if said certificate showed upon its face that the finding was not authorized by statute and that the tax sought to be refunded was properly charged, then said certificate would not be conclusive on you and you may consider the merits of the case before issuing a warrant for the refund.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 12, 1932

Mr. J. B. Byrd,
County Treasurer of School Funds,
Enterprise, Alabama.

Warrants issued by County School Board of Education of Coffee County, under the circumstances and payable as named in the opinion, are valid and should be paid when due, if money pledged is available.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your request of date March 16, 1932, is acknowledged. You state that during the scholastic year beginning July 1st, 1929, and ending June 30th, 1930, the County Board of Education of Coffee County incurred debts for current expenses of teachers' salaries, beyond its ability to pay out of the revenue for school purposes during said school year. To pay such debts, said County Board of Education on March 28th, 1931, issued warrants bearing interest at the rate of six per cent per annum from the date of such indebtedness. The warrants in payment of one third of such indebtedness, with interest, was made payable the first day of April, 1932.

The warrants for a second one third of said indebtedness with interest, was made payable the first day of April, 1933. The warrants for the remainder of said indebtedness, with interest, was made payable the first day of April, 1934.

For the payment of said warrants, said County Board of Education pledged to the payment thereof so much of the special county three mill

tax levied in Coffee County for school purposes as might be necessary to pay the said warrants when due.

You wish my opinion as to the validity of such warrants and whether you would be justified in paying said warrants when due.

In reply, will say that, in my opinion, if you have on hand, when any such warrants fall due, any part of the proceeds of the special three mill county school tax, collected under such levy for school purposes, existing when such warrants were issued, not subject to a claim preferred to such warrants, you may pay such warrants to the extent of such money. In my opinion, Act No. 84, approved March 4th, 1931 (Acts 1931, page 164) is authority for such payment.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 12, 1932

Hon. D. F. Green,
Deputy Commissioner,
Building and Loan Department,
CAPITOL.

1. By virtue of subdivision 8 of Section 9, Act No. 159, approved April 9, 1931, a Building and Loan Association may pledge notes, mortgages, or other securities in double the amount borrowed, as security for such loan.

2. A Building and Loan Association may borrow money and mortgage its real estate as security therefor, without obtaining approval of the Commissioner.

3. Money borrowed by a Building and Loan Association upon its promissory note, or upon security of mortgage of its real estate, may be used by it for any legitimate purpose of such Association.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Receipt of your letter of April 1st, 1931, is acknowledged. You ask for a construction of sub-section 8 of Section 9, Act No. 159, approved April 9, 1931, as to the following matters:

(1) If a Building and Loan Association borrows money, as provided by said sub-section 8, can it pledge notes, mortgages, or other securities in double the amount they borrow? Does this mean that

if they wish to borrow $10,000.00 the Association could not pledge more than $10,000.00 of its notes, mortgages and other securities?

(2) Can an Association borrow money on a mortgage of its real estate, without the approval of the Commissioner?

(3) If an Association borrows money on a mortgage of its real estate, or on a simple note without giving any further security, can it use that money for any purpose other than paying withdrawals?

Said sub-section 8 reads as follows:

"To borrow money, to execute negotiable notes and other evidences of indebtedness. Associations organized under this act, or already in existence, are authorized and empowered to assign their notes, mortgages and other securities for face value, or pledge the same for repayment of money borrowed, provided however, that it shall not be lawful for any association to borrow an amount of money in excess of 25% of its total assets. No association shall assign its notes, mortgages or other securities or pledge the same for money borrowed except with the consent of a majority of its Board of Directors, and with the approval of the Commissioner. Funds derived from the loans secured by assignment or pledge of their securities or notes shall be used for the retirement of shares and certificates presented for withdrawal and for no other purpose."

In reply will say that in my opinion, if a Building and Loan Association borrows money under authority given by said sub-section 8, it can pledge notes, mortgages, or other securities, in double the amount they borrow. In my opinion, it was not the legislative intent to limit the amount of security for a loan to the face value, as is provided in case of assignment of their notes, mortgages and other securities. This limitation, in my opinion, was intended to be confined to the sale, or other final disposition of such notes, mortgages and other securities.

The foregoing answers Sections 1 and 2 of question 1.

In reply to question 2, will say that in my opinion under this Act a Building and Loan Association may borrow money and mortgage real property without obtaining approval of the Commissioner. The approval of the Commissioner, in my opinion, is confined to cases of assignment of its notes, mortgages, or other securities, or the pledge of same for money borrowed. It does not apply to money borrowed on a mortgage of its real property.

In answer to your third question, will say that if a Building and Loan Association borrows money on a mortgage of its real estate, or on a simple note without giving any further security, such money may be used by it for any legitimate purpose of such Association. The use of such money,

in my opinion, is not confined to the retirement of shares and certificates presented for withdrawal.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 14, 1932

Hon. E. T. Terry, Chairman,
Madison County Board of Commissioners,
Huntsville, Alabama.

Courts of County Commissioners—Erection of flag pole in Court House yard.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of March 1, 1932, in which you inquire as to the authority of the Court of County Commissioners to expend county funds for the erection of a flag pole in the yard of the court house in Huntsville, Alabama.

I am of the opinion that your inquiry should be answered in the affirmative. Same may be done under and by virtue of Section 210, Code of Alabama, 1923, which is as follows:

> "210. County Buildings Erected and Repaired by County.—The county buildings are to be erected and kept in order and repair at the expense of the county, under the direction of the court of county commissioners which court is authorized to make all necessary contracts for that purpose."

In the discharge of the duties herein specified, the County Commissioners are vested with the discretion which can not be controlled by any judicial tribunal, that is, in the absence of fraud or any unfair dealing.—**Weeks vs. Bynum,** 158 Ala. 231, 48 So. 489.

From time immemorial, emblems of patriotism and loyalty have been displayed on or about public buildings. I am of the opinion that the erection of a flag pole in the court house yard may be considered as such a part of the erection and repair of public buildings as to come within the purview of the above quoted Code Section.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 14, 1932

Hon. D. F. Green,
Deputy Superintendent of Banks,
CAPITOL.

Banks and Banking—Loan of funds to officers of bank—Construction of Section 3412, Code of Alabama, 1923.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of April 9, 1932, in which you request my opinion as to the construction of Section 3412, Code of Alabama, with reference to the following facts:

1. Suppose a Cashier of a bank, desiring to make an investment and not having his own funds with which to make it, arranges with a friend to borrow money from his bank and turns the same over to him and enters into an agreement in which they make a memorandum as follows: "This memo is to show that —..... shares of ..... company, bought on ..... day of ..... at $55, and bought in the name of ..... and carried in his name at ..... state bank, is the property of ..... (cashier) and the said (cashier) is liable for payment to bank.

This memorandum is signed in duplicate by both the men, whose name is signed to the note in the bank and the cashier. Is this or not embezzlement?

2. Where the same cashier of a bank bought stock and bonds jointly with another friend and had the friend execute a note for the purchase price thereof, the name of the cashier not appearing on the note and the funds loaned by the bank used to pay for the stocks and bonds were all borrowed on the note of this friend of the cashier, but the cashier being jointly interested and evidence is produced that the cashier paid his half interest on the note, thus showing he was jointly interested in the transaction and loss was sustained by reason of this by the bank, is this or not embezzlement, under section 3412?

3. If the above is embezzlement would the cashier be guilty of embezzling the full amounts of the loan, where he is only half interested, or would he be simply held liable for the embezzlement as to his half interest in the loan?

I am of the opinion that your first and second inquiries should be answered in the affirmative.

Section 3412, Code of Alabama, 1923, is as follows:

"3412. Loan of funds to officer of bank.—Whoever, being president, cashier, teller, clerk, officer, or employee of any incorporated bank, or of any firm, corporation, person or association doing a banking business, **shall, in any way, obtain as a borrower any of the funds of such bank,** firm, corporation, person or association doing a banking business, without first executing his note or other evidence of debt therefor, bearing the written consent thereto of the board of directors of any such incorporated bank, or the manager or managers of any other such firm, corporation, person or association doing a banking business, indorsed on the note or other evidence of debt, must, on conviction, be punished as if he had embezzled the amount borrowed."

It seems that under the facts set out, that the cashier would be guilty of embezzlement under this Section as the section provides that if any funds of the bank are obtained in any way by certain officers as a borrower, said person shall be guilty as if he had embezzled the amount borrowed. Though this was not done directly, it was done indirectly as it appears that the cashier received benefit of the money the same as if he, himself, had borrowed it. One cannot do indirectly what he cannot do directly.

In answer to your third question, the cashier would be guilty of embezzling one-half the amount of the loan as he only received benefit of this amount.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

Note: As to third paragraph—See opinion to D. F. Green under date of May 3, 1932.

April 15, 1932

Hon. J. N. Baker,
State Health Officer,
Montgomery, Alabama.

State Medical Association—authority of uninstructed delegates to Annual Meeting.

Opinion by The Attorney General.

Dear Sir:

I have a letter from Dr. James R. Garber, of Birmingham, in which he inquires whether or not, after he has been elected as an uninstructed delegate to the State Medical Association, the County Medical Society can instruct him as to his votes on various matters.

I am of the oponion that as he was elected as an uninstructed delegate, that his vote cannot be controlled by any subsequent action on the part of the County Medical Society.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 18, 1932

Hon. Chas. E. Brooks,
Member of the Legislature,
Fort Deposit, Alabama.

Section 6750, Code of 1923, provides that County Commissioner is ineligible to hold any other office.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of April 13th in which you inquire:

"Please advise me whether a County Commissioner is eligible to hold another office of profit either under the authority of the State or of a municipality."

In reply I beg to advise that you can find the answer to your question in Section 6750 of the Code of 1923, which is as follows:

"6750. Commissioners ineligible to certain offices.—No county commissioner is eligible to or must discharge the duties, either as principal, or deputy, or any other office."

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 21, 1932

Hon. D. W. Crosland,
Judge of Probate,
Montgomery, Alabama.

Licenses—Street Fairs operated under auspices of the Alabama Street Fair Association.

Opinion by The Attorney General.

Dear Sir:

I have your letter of April 18th, 1932, which reads as follows:

"Please refer to an Act approved June 6, 1931, (Acts 1931, p. 288) and advise whether or not a street fair operated under the auspices of the Alabama State Fair Association in the City of Montgomery from April 16th to 24th, inclusive, is exempt from the payment of the license fee therein required. It has been stated to me that there is no general admission fee charged and same is in the nature of a rehearsal as provided for in said act, only it is being conducted on the streets of Montgomery instead of being conducted at their regular winter quarters."

In answer to your inquiry, I am of the opinion that the State Fair in question is exempt from payment of the license provided for by an Act approved June 6, 1931, (General Acts 1931, page 288). The Act exempts from license: (1) any State fair or carnival operated by or under the auspices of the State Fairs, County Fairs, or District Fairs, and (2) the first four weeks rehearsal performances after closing of winter quarters in this state of a street fair or carnival owned by a citizen of this State and having its principal situs in Alabama, and maintaining its permanent winter quarters in Alabama.

The last sentence of said Act provides as follows: "Provided further, that on an after October 1, 1931, all street fairs or carnivals charging an admission fee shall be subject to the regular license provided for under this Act."

It is my opinion that it was not the intention of the Legislature to nullify the exemption provided for in the first part of the Act by the proviso above quoted. The above quoted proviso applies only to the street fairs or carnivals charging an admission fee. It is my opinion that the admission fee referred to is a general admission fee for admission to the fair or carnival grounds.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 21, 1932

Hon. R. G. Redden,
County Attorney, Lamar County,
Vernon, Alabama.

1. Deputy sheriff on a salary—When entitled and when not entitled to pay for waiting on court.

2. The circuit clerk is now entitled to fifteen cents per hundred words for making transcript on appeal to the Court of Appeals.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of March 21st in which you request my opinion as follows:

1. Is a deputy sheriff on a salary from the county who waits or attends on circuit court allowed $3.00 per day the same as a bailiff?

2. The circuit clerk made transcripts to the Court of Appeals before the law was changed. Under the old law he received the same as making transcripts to the Supreme Court. Please advise me if the statute has been changed or if there has been a recent law passed regulating such costs?

Answering your first inquiry, it is my opinion a deputy sheriff who is on a salary paid by the county, is not entitled to extra pay while acting as bailiff of any court. The court is paying him a salary, and in doing this it is entitled to all his time for such salary and waiting on the court is a part of the duties of the sheriff, and when a salaried deputy sheriff is performing this service, he must do so without extra pay. Of course, there are exceptions where the sheriff is paid so much a day for waiting on certain terms of the court, and in this event, of course, the salaried deputy would be entitled to draw this pay the same as the sheriff.

Answering your second inquiry, this office construing the old statute, has held that where it says Supreme Court it also includes Court of Appeals.

Opinions of Attorney General, Book 4, p. 105, (Office Edition).

However, this work is now provided for by a General Act of the Legislature approved June 18, 1931 (General Acts, 1931, p. 331). The part of the section which applies to the matter here under consideration is as follows:

"Record for Court of Appeals, for each one hundred words, $.15."

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 21, 1932

The State Tax Commission,
CAPITOL.

Attention: Mr. John S. Mooring.

Act No. 206, House Bill 119, Stokes, approved May 23, 1931, (General Acts 1931, pp. 259, 260) held constitutional.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of March 21st asking that I review and reconsider the opinion addressed to Hon. B. L. Malone, Judge of Probate, Morgan County, under date of February 25th holding Act No. 206, House Bill 119, providing that motor vehicle tags shall remain on the car for which originally purchased, to be unconstitutional.

I have considered your letter and the brief in support of your position prepared by Hon. Chas. O. Stokes, Attorney of Ozark, Alabama.

Upon further and more careful consideration, I am of the opinion that the former opinion should be withdrawn and the Act held to be constitutional. I base this conclusion on the reasons hereinafter discussed.

The title of the Act is as follows:

"To permit automobile, automobile truck and other motor vehicle license and license tags to remain with the automobile, automobile truck or other motor vehicle for which they were purchased, and to be used by the new owner of such automobile, automobile truck or other motor vehicle and to require proper record in the Probate Office and in the State Tax Commissioner's Office of such change of ownership, and to prohibit any motor vehicle license tag being transferred from one motor vehicle to another or being used on any motor vehicle except the one for which it was originally taken out."

The body of the Act is as follows:

Be it enacted by the Legislature of Alabama:

"Section 1. That when a proper automobile, automobile truck or other motor vehicle license tag shall have been bought for the current tax year for an automobile, automobile truck or other motor vehicle, and such automobile, automobile truck or other motor vehicle shall have been sold or transferred to a new owner or to new owners, either once or successively, such automobile, automobile truck or other motor vehicle license tag shall remain on such automobile, automobile truck or other motor vehicle in the hands of the new owner

or successive owners for the balance of the tax year, and no new or other license tag need be taken out for the operation of such automobile, automobile truck or other motor vehicle until the beginning of the next tax year, provided each and every change of ownership of such automobile, automobile truck or other motor vehicle and the name and address of the new or successive owner are noted by the Probate Judge on his record of the license and reported by him to the State Tax Commission within ten days after such change in ownership is reported to him, and it shall be the duty of the old and new and successive owners to report such change in ownership to the Probate Judge within five days from such change in ownership.

"Section 2. That no automobile, automobile truck or other motor vehicle license tag shall be transferred from one motor vehicle to another motor vehicle, nor shall any motor vehicle be operated with any motor vehicle license tag which was originally purchased or taken out for use on or for the operation of another motor vehicle.

"Section 3. That any person failing to perform the duty required of him by the provisions of this Act shall be guilty of a misdemeanor and upon conviction, shall be fined not exceeding one hundred dollars.

"Section 4. That all laws and parts of laws, in conflict with this Act be and they are hereby expressly repealed.

"Section 5. That this Act shall go into effect on October 1, 1931.

"Approved May 23, 1931."

In the opinion rendered under date of February 25th, this Act was held violative of Section 45 of the Constitution. The basis of this holding was that the title of the Act uses these words: "To permit * * * license tags to remain with the vehicle for which purchased," while the body of the Act says such "license tags shall remain with the vehicle for which purchased." This was held to be a fatal variance between the title and the body, based principally upon the authority of First National Bank of Evergreen vs. Hagood, 206 Ala. 308, 89 So. 497.

In this case a local bill was construed. The County Commissioners were **authorized** to pay the Tax Assessor a certain fee for certain work. The body of the Act **required** them to pay such sum. This was held to constitute a fatal variance between the title and the body. In this case the Act was local. The subject was specific and limited. Nothing was included in the Act but the single subject, to-wit, the payment of a specified sum of money. In that fact alone, I deem the present Act under consideration unlike that construed in the Hagood case.

If House Bill 119 had contained nothing more than the provisions above briefly quoted, the reasoning in the Hagood case might have applied.

Upon a more careful consideration of the Act, however I find that both the title and the body treat of a general subject matter, to-wit, the transfer of motor vehicle license tags. The title permits the tag to remain on the car, requires the record in the Probate Office of such transfer of ownership of the vehicle, and prohibits the use of the tag on any other car. The body of the Act provides that when ownership of the vehicle is transferred, the tag shall remain on the motor vehicle and no new tag **need be taken out provided, such change of ownership is recorded as provided in the Act.**

Section 2 of the Act then prohibits the use of the tag on any other motor vehicle. This also appears in the title.

All these provisions lead me to the conclusion that the Act is not violative of Section 45 of the Constitution for these reasons:

First, the Act is a general one. The title, in my oponion, fully apprises the reader of the nature and substance of the bill. The provisions in the body all appear to be cognate and germane to the title. As to the variance between "permit" as used in the title and "shall remain," as used in the body a careful reading of the Act will disclose no variance. The title permits the tag to remain on the car. The body says the tag shall remain. When and how? When the transfer of ownership is recorded as provided. This is a permission and nothing more. Parties can avail themselves of the privilege by complying with the conditions. If they do not comply with the conditions, they must take out a new license. This is clearly shown by these words "the license tag shall remain on such motor vehicle and no new license need be taken out provided each and every change of ownership is noted by the Probate Judge." The tag shall remain and be used on the car but only on the condition that the change of ownership is noted on the record by the Probate Judge. Otherwise a new tag will have to be secured.

It is difficult to see how the title of the Act could be otherwise worded and carry out the intent of the entire Act. If a person should voluntarily take out a new tag which he has a right to do, however unnecessary such action might be, if there was an absolute requirement that the original tag and no other could be used on the vehicle, he could not use such new tag and in the absence of the replacement law would be unable to operate his car if the original tag should become lost. Such is not the language or the intent of the law, in my opinion.

The Act construed as a whole clearly permits license tags to remain on motor vehicles through successive ownerships but with the necessary proviso that such changes of ownership be noted on the record by the Probate Judge. So reading the Act there is no conflict or variance between the title and the body and therefore in my opinion the same is not violative of Section 45 of the Constitution.

With the foregoing I see no necessity for citation of authority but the following principles support the conclusion reached.

"In reaching the conclusion as to the constitutionality of an act it is the Court's duty to uphold the statute unless it clearly appears to be unconstitutional."

Byrd vs. State, 212 Ala. 265, 102 So. 223.

"When there is a fair expression of the general subject of the act in its title, all matters reasonably connected with it, and all proper agencies or instrumentalities, or measures, which will or may facilitate its accomplishment, are proper to be incorporated in the act, and, as usually said, are cognate or germane to the title."

Lindsay vs. The United States Savings and Loan Association, et al., 120 Ala. 156, 24 So. 171.

Furthermore the opinion of Justice Somerville in First National Bank of Eutaw vs. Smith, 217 Ala. 482, 117 So. 38, fully discusses and differentiates the Hagood case. The Act held to be constitutional in the Smith case is decidedly more analogous to the Act under discussion than that construed in the Hagood case.

It is therefore my conclusion that Act No. 206, House Bill 119, approved May 23, 1931, is constitutional and the opinion rendered under date of February 25, 1932, holding contra is hereby overruled and withdrawn.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 23, 1932

Hon. Felix A. Walker, Chairman,
County Democratic Executive Committee,
Russell County,
Hurtsboro, Alabama.

1st. The time by which a candidate for County office of Russell County must file his declaration of candidacy to be voted on at the Primary Election May 3rd, 1932, is March 1st, 1932.

2nd. The time is fixed by Act No. 56, approved February 25th, 1931. A County Executive Committee has no authority to extend this limitation.

3rd. A member of the County Executive Committee of a political party is a "County officer" within the meaning of said Act.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of April 22nd to hand. You desire my opinion as to by what time a candidate for a County office must file his declaration of candidacy with the Chairman of the Democratic Executive Committee to qualify him as a candidate to be voted on at the Primary Election to be held May 3rd, 1932.

You further desire my opinion as to whether or not the County Executive Committee of Russell County has authority to extend the time for filing such declaration to a time later than March 1st, 1932.

In reply will say that the matters inquired about are controlled by Act No. 56, approved February 25th, 1931. This Act in Section 12 fixes the time for filing such declaration at not later than March 1st next preceding the holding of such primary. This is the plain and unequivocal requirement of the last statute upon the subject. There is no authority given the Executive Committee nor to anyone else to change this plain mandate of the statute.

By Section 60 of said Act, subdivision (f) the words "County office" or "County officer", as used in said Act, includes members of the County Executive Committees of political parties.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 25, 1932

Hon. Daniel H. Thomas,
Assistant Solicitor,
First National Bank Bldg.,
Mobile, Alabama.

Solicitors—Duties of solicitor to represent state in controversies for the collection of taxes due state.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of March 31, 1932, in which you state the license inspector has requested that you file civil suits against several concerns who are delinquent in both state and county licenses, which means, of course that the penalty, citation fee, interest and probate fees are due in addition to the regular state and county license.

You request my opinion as to whether or not the silicitor has authority to file these suits in behalf of the license inspector and is written authority necessary to such procedure.

I am of the opinion that the solicitor has authority to proceed in such instances under and by virtue of Section 5498, Subsection 3, Code of Alabama, 1923.

In actions for the collection of taxes due the state, it is the duty of the solicitor to represent the state. Attorney General also has the power to institute proceedings in such cases and has authority to designate the solicitor to prosecute in those matters in which the state is interested.—Report of Attorney General, 1918-20, page 510.

Under Section 860, Code of Alabama, 1923, the Attorney General has the power to designate any solicitor to aid and assist the investigation and prosecution of any case in which the state is interested. If you desire to have direct authority of this office relative to the institution of said suits, I will be more than glad to give you same but am of the opinion that such is not necessary for you to proceed.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 25, 1932

Hon. A. H. Glasgow,
Judge of Probate,
Heflin, Cleburne County, Ala.

The Judge of Probate is without power to reinstate a name on the qualified list which has been stricken from said list by the board of registrars.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of April 14, 1932 in which you request my opinion as follows:

"In the year 1930 the Registrars filed in my office a book containing the names of those stricken from the list of registered voters in Cleburne County. Their names were stricken from the list of qualified voters and not published in the year 1930 nor in the year 1932.

"I received a letter today from one of the parties, asking me to place his name on the supplemental list which will be published next week. Have I the right to place his name on the list of qualified voters when the Registrars have his name stricken from the list?"

When a name has been stricken from the list by the registrars under Section 392, 393, 395 and 396, Code of Alabama, 1923, the only remedy left for the party aggrieved is by an appeal to a jury in the circuit court, but if no appeal is taken, then the Probate Judge in making up the qualified list must follow the plain mandate of Section 396, supra, which says in part: ". . . . . On the filing of said books the judge of probate shall strike all such names from the list in his office **and shall not again send them out to the inspectors.**"

Now you will find that there is a provision in Section 387, Code of Alabama, 1923, which permits the Judge of Probate, under certain conditions where the name has been inadvertently or through mistake omitted from the list, and where the party has paid all poll tax due and is entitled to vote, etc., on proper proof to add such name to the list, but certainly this does not include names that have been stricken by the board of registrars for any reason, but only includes such names as were inadvertently or through mistake left off.

The reason for this is that the registrars in striking a name from the list after hearing, act in a judicial capacity and this being true the only remedy the applicant or petitioner has is by an appeal to a jury in the circuit court as is provided by Section 395, supra.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 27, 1932

Mr. T. P. Tompkins,
Clerk of the Probate Court, Russell County,
Seale, Alabama.

1st. Any person desiring to submit his name to the voters in a primary election shall, not later than March 1st, next preceding the holding of such primary election file his declaration of candidacy with the Chairman of the County Executive Committee, if he be a candidate for a County office.

2nd. The failure of the Chairman of the Executive Committee to file the list of qualified candidates with the Probate Judge forty days before a primary election does not invalidate or affect the ballot subsequently prepared where the list was filed at a later date, but in time for the Judge of Probate to comply with the requirements of the law in preparing and distributing ballots.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of yesterday to hand. You state the following facts:

The County Democratic Executive Committee of Russell County met prior to March 1st, 1932, and made an order extending the time for any person desiring to submit his name to the voters in the primary election to be held May 3rd, 1932, to April 1st, 1932. Accordingly, two persons, each desiring to submit his name to the voters of Russell County in such primary election for the office of member of the County Board of Education, one for the office of Judge of the Inferior Court of Beat One, and one for the office of Constable of Beat One, and nine each desiring to submit his name for a member of the County Executive Committee of Russell County from his Beat, failed to file his declaration of candidacy in the form prescribed by the governing body of the Democratic Party with the Chairman of the County Executive Committee until after March 1st, 1932.

The Chairman of the Democratic Executive Committee of Russell County failed to certify to the Probate Judge of the County the names of the candidates for county offices forty days prior to the election; but did file them later.

You ask my opinion:

1st. Was the order of the Democratic Executive Committee of Russell County extending time for filing declaration of candidacy for a County office valid? Did the County Executive Committee have such authority?

2nd. Did the failure of the Chairman of the Executive Committee to file with the Judge of Probate the list of qualified candidates for county offices forty days before the election, in any way, affect the validity of the ballot, or ticket, subsequently prepared by the Judge of Probate?

In reply to question one will say that Section 12 of Act No. 56, approved February 25, 1931, fixes the time for any person desiring to submit his name to the voters in a primary election at not later than March 1st, next preceding the holding of such primary election. This is the last Act on the subject and gives no authority to a County Executive Committee, nor to anyone else, to extend this time. The order of the Committee attempting to extend the time fixed by the statute was a nullity. No person who failed to file his declaration by March 1, 1932, can be legally voted for in such primary on May 3rd, 1932.

If such a name is put on the ticket and voted for by anyone, such vote for such person cannot be legally counted. The requirement of the person desiring to be voted on in the election is mandatory.

In answer to your second question will say that the requirement of the Chairman of the County Executive Committee is not mandatory in the sense that the ballot is invalidated by his failure to file the list of qualified candidates with the probate judge forty days before the primary. Such a construction would put in the power of such Chairman the power to nullify any primary election he might see fit to nullify. If the Chairman of the Executive Committee fails to file with the Judge of Probate the list within the time named by the statute, he can be mandamused by a court of competent jurisdiction to file the same in time for preparing the ballot for the election.

As to whether or not one will become a candidate in a party primary election for nomination for an office, is entirely discretionary with him; but to do, he must comply with the law on the subject.

As to whether or not the Chairman of an Executive Committee will file a list of candidates is not discretionary with him and if he does not do so, when required by law to do so, he can be made to do so after the expiration of time fixed for doing; but in time for all practical purposes.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 28, 1932

Hon. W. W. Brandon,
Judge of Probate, Tuscaloosa County,
Tuscaloosa, Alabama.

1st. The privilege or license tax due on filing a deed for record is governed by Section 21½ of Act No. 163, approved July 22nd, 1931.

2nd. The amount of the tax required is governed by the actual value of the property at the date of conveyance. Where deed shows that the property conveyed is subject to a mortgage or mortgages or to a vendor's lien, then the actual amount due on such mortgage, mortgages or vendor's lien, at the date of transfer, may be deducted from the value of the property conveyed, and the amount of the privilege tax estimated on the balance left after such deduction. If the balance so left, is five hundred dollars or less, then fifty cents; if more than five hundred dollars, then fifty cents for each five hundred dollars or fraction thereof.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of April 8th is acknowledged. You send copy of deed from Wade H. Oldham to N. C. Coston, of date March 21st, 1932. You

ask my opinion as to correct amount of privilege or license tax you should collect on the filing of such deed for record.

The deed, as shown by the copy attached to your letter, purports to convey certain property, for one hundred dollars cash, subject to certain encumbrances, viz: first, a mortgage of $17500.00 recorded in Mortgage Book 357 at page 437, and mortgage of $3000.00, recorded in Mortgage Book 361 at page 40.

Subject also to judgment American Traders National Bank, v. V. C. Foster, Defendant, recorded in Judgment and Decree 6, page 36.

Also subject to any lien that may have been filed.

In reply will say that the amount of tax to be paid on filing is governed by Section 21½ of Act No. 163, approved July 22nd, 1927. (Acts 1927, page 163, et seq).

The Probate Court is not controlled by recited amount of consideration in the deed; nor is it controlled by the recited amount of mortgage or vendor's lien. The Probate Court should be governed by the actual facts in the case at the time the deed was executed:

1st. What was the value of the property conveyed?

2nd. What was the amount due on the mortgage, or mortgages, recited, at the time of the conveyance?

After deducting the balance due on the mortgage or mortgages, named, from the value of the property conveyed, the balance left, is the amount upon which the privilege tax should be estimated. If there is no balance there is no license tax on filing for record. After stating the method of estimating the amount of the privilege tax in such a case as the one proposed by you, said Section 21½ provides:

"Provided, that only the value in excess of any mortgages or vendor's lien upon any property within this State on which the mortgage tax has been paid, shall be taxable under this Section," etc.

It is clear that nothing mentioned, in the copy of the deed presented, should be deducted from the value of the property conveyed, except the balance due, on the mortgages named, at the date of the deed.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 28, 1932

Hon. J. F. Beebe,
Beebe & Hall, Attorneys,
Bay Minette, Baldwin County, Ala.

The privilege or license tax provided by Section 21½ of Act No. 163, approved July 22nd, 1927, applies to the filing for record of the transfer of a mortgage made to the Federal Land Bank of New Orleans.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Receipt of your letter of April 1st acknowledged.

You ask my opinion on the following state of facts:

A mortgage on real estate lying in the State of Alabama was executed to the Federal Land Bank of New Orleans, and duly recorded in the County where the land lies. After recordation this mortgage was assigned to "A". "A" presents this assignment to the Judge of Probate for record. Should the payment of a privilege or license tax be required by the Judge of Probate before accepting such instrument for record?

In reply will say that the question asked is governed by Section 21½ of Act No. 163, approved July 22nd, 1927. The pertinent part of this Section reads as follows:

"No deed, bill of sale or other instrument of like character which conveys any real or personal property within this State, except the transfer of mortgages on real or personal property within this State upon which the mortgage tax has been paid * * * shall be received for record unless the following privilege or license tax shall have been paid upon such instrument before the same is offered for record, to-wit" etc.

It will be noticed that in the law, as last written, there is the clause: "except the transfer of mortgages on real or personal property within this State upon which the mortgage tax has been paid."

The assignment of a mortgage is the transfer of a mortgage. "The exception of a particular thing from the operation of the general words of a statute shows that, in the opinion of the lawmakers, the thing excepted would be within the general words had not the exception been made."—Lewis' Sutherland Statutory Construction, Second Edition, Vol. 2, page 672, Section 351.

In other words, the exception shows that the Legislature of 1927 considered that transfers of mortgages on real estate in this State would fall under the general words of the statute, if not excepted therefrom. Hence, the exception of "the transfer of mortgages on real estate or personal property within this State upon which the mortgage tax has been paid." It does not except the transfer of mortgages upon which the mortgage tax has not been paid. The implication is that all such transfers are included. This is not a tax on the mortgage, but a tax on the privilege of recording a transfer of the mortgage. The transfer is made for the benefit of the transferee. "An exception is strictly construed."—Lewis' Sutherland Statutory Construction, Second Edition, Section 351.

It is true that the Supreme Court of Alabama in the case of Garrison v. Hamlin, 215 Ala. 30, held that the Act No. 391, approved September 14th, 1923, did not apply to the transfer of a mortgage; but said Act did not contain the exception quoted, which shows that the Legislature of 1927, did so understand the language in the 1927 Act, which we are now considering.

I am of opinion the privilege tax or license on recording such transfer must be paid. The exemption of mortgages to the Federal Land Loan Banks from taxation does not extend to the filing for record of a transfer of such mortgage to an individual or private corporation.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 28, 1932

Hon. J. E. Speight,
Secretary of the Senate,
State of Alabama,
CAPITOL.

Secretary of the Senate entitled to per diem compensation for per diem service rendered upon certificates that services required of him by the Legislature have been performed.

Opinion by the Attorney General.

Dear Sir:

I have your letter of April 27th in which you inquire whether or not Senate Resolution 137 providing among other things that you shall, as Secretary of the Senate, after copying and delivering the Journals of the Senate to the Secretary of State, remain on and keep your office open during the time intervening between the then session of the Legislature and any special session, and the next regular session, and providing other

duties of you, after the adjournment of the regular session of the Legislature, furnishes authority for a presentation by you of a claim for compensation provided by statute for per diem services as Secretary of the Senate.

A consideration of your inquiry must of necessity involve a consideration of the pertinent Sections of the Constitution relative to the payment of money out of the State Treasury and of the statutory provisions which may have a bearing on the subject. I have heretofore considered the question you present in a consideration of whether or not the Clerk of the House of Representatives was entitled to compensation after the regular session of the Legislature where he performed duties required of him by the Legislature. In the opinion of September 25, 1931, to the State Auditor I am convinced that I did not properly consider the power of the Legislature to, **by resolution**, prescribe duties for its subordinate officers which were to extend beyond the session of the Legislature but within the term for which such subordinate officers were elected. For this reason, I am forced to a reconsideration of that opinion.

Section 67 of the Constitution of 1901 provides that: "The Legislature shall prescribe by law the number, duties, and compensation of the officers and employes of each house." We may dismiss from consideration the question of the number and compensation of the subordinate officers of the Legislature, within the meaning of this Section of the Constitution, for by Section 1527, Code of 1923, by Act of the Legislature it was provided that there should be elected a Secretary of the Senate whose term of office should extend until his successor is qualified. This officer of course may have his term interrupted by being removed for **cause**, indicative of the fact that he has a term of office for four years as has each member of the Legislature. Section 1528 provides per diem compensation for such officer. Of course where a per diem service is not rendered there can be no compensation.

Reynolds vs. Blue, 47 Ala. 711.

Pointing to statutory provision creating the office and statutory provision providing compensation, it remains to determine whether or not the Legislature has "by law" provided duties for such officer and whether or not it had the power to provide duties for such officer beyond its regular session or first session. In other words, whether the Senate of the State of Alabama in accordance with the Constitution of 1901, imposed duties upon the Secretary of the Senate.

It must be borne in mind that the Legislature which assembled and elected this officer in January, 1931, is still the Legislature of the State of Alabama. While it may have adjourned after having been in session fifty legislative days, and without naming a day, it may be called into a session which is extraordinary. The Legislature may be recalled by the Governor and under certain circumstances provided by the Constitution it may recall itself. This is mentioned because it clearly demonstrates

that the Legislature is not functus officio except for the regular fifty day session.

I cannot draw a distinction between the force and effect of Section 67 of the Constitution providing that the Legislature must by law fix duties for the employees of the Legislature, and Section 53 which provides that **each House shall have the power to determine the rules of its proceedings, and to enforce obedience to its processes, and the two Houses,** or either of them, as I construe it, **shall have the power necessary for the Legislature of a free state.**

Neither the Constitution nor the statute attempts to prescribe every duty of the Secretary of the Senate or the Clerk of the House. Evidently the framers of the Constitution intended to confide in each House the right to prescribe the duties of its subordinate officers which might be germane or incident to the duties of such an officer of a legislative branch of government, probably a rule necessary to effectuate obedience to its processes within the meaning of Section 53 of the Constitution of 1901.

When either branch of the Legislature has during the term of office prescribed by statute of its subordinate employees, prescribed certain duties to be performed by its employees, so long as it is a branch of the Legislature of Alabama, I cannot say that it has not prescribed its duty pursuant to law as contemplated by Section 67 of the Constitution of 1901.

Of course rules of each House of the Legislature must be adopted by Resolution of each House and while technically speaking the same might not be considered a law enacted pursuant to Section 45 of the Constitution of 1901, yet the same must be considered as a Resolution with force of law within the meaning of Section 67 of the Constitution.

Ex parte Matthews, 52 Ala. 51.

Obviously it is beyond the power of one deciding a question analogous to this to look for the motive of a coordinate branch of government seting within the scope of its authority under the Constitution.

It should be observed that framers of the Constitution gave the power to each House of the Legislature to, by resolution, provide for an organization during its term of the Legislature in view of the fact that each branch of the Legislature at times may assemble or be assembled independently of the other, as when the House meets to determine whether or not it shall prefer impeachment charges against certain officers, and as when the Senate convenes to, as a Court, determine these charges.

I am of the opinion that the Senate may by resolution prescribe duties to be performed by the Secretary of the Senate beyond the adjournment of the regular session of fifty legislative days.

Upon the presentation of a certificate of the proper officer that you have performed the services required of you by the House of the Legislature of which you are Secretary, you are entitled to the compensation fixed by statute for such services.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 29, 1932

Hon. John Brandon,
State Auditor,
CAPITOL.

State warrant issued through error should be cancelled by State Auditor and charged off by the State Treasurer.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of April 11, 1932, in which you request my opinion on the following matter:

"I am in receipt of a State warrant drawn in favor of S. Lacy, Register of Circuit Court of Walker County. This warrant bears registered No. 6407-E and was issued on March 28, 1932 for payment of the cost in a condemnation case of State v. E. Cunningham, et al.

"I have been advised by Mr. Lacy that the cost in the above case has been paid and that the above mentioned warrant was drawn in error. The records in this office show that the cost in the above mentioned case was paid on December 6th, 1928.

"This warrant has been returned to me in order that I could cancel same and certify it into the fund from which it was drawn. The State Treasurer refused to accept it, stating that it is a registered warrant and cannot be charged off on his books until he has paid all registered numbers that come before this particular number.

"In cases where a warrant is drawn in error and the Auditor cancels the warrant and makes the notation on same (that warrant was drawn in error) hasn't the State Auditor authority to certify same into the State Treasury and isn't it his duty to accept same as a cancelled warrant."

I see no reason why the State Treasurer, after you have cancelled the above warrant stating it was drawn through error, could not charge it off, as this would not affect other registered warrants which registration showed date prior to the date of the registration of this warrant. As no money passed out of the State Treasury by reason of the same, no

one could claim that it was being paid out of its order for, as a matter of fact, it is not paid but cancelled, and could not in the least affect or delay the payment of other outstanding warrants.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

April 29, 1932

Hon. J. Z. Mims,
Clerk, Circuit Court,
Clanton, Chilton County, Alabama.

(1) Before a candidate can have his name appear on the official ballot in a Primary Election in this State, he must comply with all the rules and regulations laid down by the party machinery, and cannot have his name written upon the ballot and voted for.

(2) In case a name is written and voted it cannot be counted.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of April 28th, 1932, in which you request my opinion as follows:

(1) Is it legal to write names in blank spaces on official ballots as candidates for Executive Committeemen and vote same when a sufficient number of candidates have qualified for said office under the rules and regulations laid down by the Executive Committee of the party or other party machinery?

(2) If names are written in and voted can they be legally counted?

Answering your first inquiry, it is my opinion before a candidate's name can go or be printed on the official ballot to be voted in any Primary Election held under the General Primary Law of this State, which law was approved February 25, 1931, (General Acts 1931, p. 73) he must comply with all requirements of the party machinery, and a person failing to do this cannot have his name written on such ballot. If it were otherwise the rules fixed by the governing power of any party would be inoperative. I realize the rule would be different in case of a General Election held in this State.

Answering your second inquiry, it is my opinion that a name written on a ballot and voted, would be illegal and the manager would be without authority to count such vote.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 3, 1932.

Hon. D. F. Green,
Deputy Superintendent of Banks,
CAPITOL.

Banks and Banking—Loan of funds to officer of bank—Construction of Section 3412, Code of Alabama, 1923.

Opinion by the Attorney General.

Dear Sir:

My attention has been directed to my opinion to you of April 14th, relative to embezzlement by an officer of a bank.

In answer to your third question, whether or not, in a joint enterprise, where an officer of a bank is only one-half interested in the loan, I have come to the conclusion that where such officer connived at and aided in making such a loan for a speculation in which he was interested as a partner, that it is impossible to consider him as an embezzler of only one-half of the amount. In my opinion he is guilty of embezzling the full amount of a loan made in which he, himself, took an interest.

I am of the opinion that he is guilty of the embezzlement of the full amount borrowed for the purposes stated.

The opinion of April 14th is corrected as has been herein stated.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 4, 1932.

Hon. J. H. Hard, Jr.,
Chief Examiner of Accounts,
CAPITOL.

The right of clerk to charge for continuances in criminal cases.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of March 3rd, 1932, in which you make the following statement, and request my opinion:

"In a case in the County where the Judge's Bench note entry in regard to a case on trial is 'continued for settlement,' and it is evi-

dent from the office files that there is a 'plea of guilty on file,' and the case is not determined for, in some instances, for years.

"Without any other entries by the Judge at terms of the court subsequent to the first term at which the above mentioned 'bench note' shows judicial order, the Clerk at the end of the time mentioned charges continuance fee for each and every term of the court elapsing amounting to 48 continuances.

"The case appears on no other page of the docket except the first mentioned and was apparently lost sight of until day of determination four years from its beginning when a nol pros is entered, notwithstanding the 'plea of guilty on file,' and an evidence of piece meal payment of nearly all the costs in the case.

"The Clerk then makes claim against the Fine and Forfeiture Fund for fees in the case, including therein 48 continuances at 25c each."

It is my opinion that only one continuance should be allowed in this matter as you state that the record shows there was a "plea of guilty" and for some unknown reason the case was allowed to drag for some four years and finally was nol prossed. You further state that the case appears on no other page of the docket. Certainly if the case was continued each term of court, in the regular way, this case should have been brought forward with all former orders of the court, and this not having been done, the clerk could charge for only one continuance.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 4, 1932.

Hon. G. L. Malone,
Judge of Probate,
Fort Payne, DeKalb County, Alabama.

Sawmills moved from one place of business to another in the same county liable for license at each place of operation.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of March 31st in which you inquire:

"We have in this County several small sawmills that are called locally 'Portable Mills' that move from one stand of timber to the

next. Will these mills be liable for a new license for each new location in this County?"

In reply I beg to advise that Section 363, Acts 1919, p. 282, states that the license "shall not entitle the holder thereof to carry on any other business or do any other act than that named therein, **nor at any other location than that therein specified.**" This Section necessarily requires the issuance of license for each place of business.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 5, 1932.

The State Tax Commission,
CAPITOL.

Attention: Mr. Gamble.

Person operating a cigar stand in one part of a hotel and separate stand in coffee room liable for license on both stands.

Opinion by Assistant Attorney General Moore.

Centlemen:

You recently referred to this office letter of Mr. H. D. Childers, License Inspector of Mobile County, in which it was stated:

"The Battle House Cigar Stand operating in this city handle cigars, cigarettes, etc., and pay a State and County license on same. They also have a stand in the Battle House Coffee Room which is under the same roof, but in a different part of the building and handle cigars and cigarettes. Kindly advise if they are liable for additional license for the sale of cigars and cigarettes handled in the Coffee Room."

In reply I beg to advise that Section 363, Acts 1919, page 282, provides that the license issued shall "specify the name of the person, firm or corporation applying therefor, the business or act which it is proposed to carry on or do thereunder, the name of the street or location where it is proposed to carry on the same * * * and such license shall not entitle the holder thereof to carry on any other business or do any other act than that named therein nor at any other location than that therein specified."

Construing this language strictly it would seem that there is liability under the facts set out for both licenses.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 5, 1932.

Hon. L. W. Price,
Judge of Probate,
Evergreen, Conecuh County, Alabama.

Coffin dealer removing his business from one county to another liable for State and County license in the second county.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"Please furnish me an opinion as to the following matter, as soon as possible. A ran a casket factory in Butler County; according to the records he paid State and County privilege license in Butler; now he has moved into Conecuh County. He insists that he does not owe the State for any more privilege tax this year; but to Conecuh County only. Please advise if privilege license could be issued him for Conecuh County without including the State license also."

In reply I beg to advise that the license on coffin dealers is prescribed by Section 38, Acts 1919, p. 282, which appears as Section 39 of the Revenue Code of 1929. Section 363, Acts 1919, p. 282, says: "Such license shall not entitle the holder thereof to carry on any other business or do any other act than that named therein, **nor at any other location than that therein specified.**"

Therefore, it is my opinion that this party is liable for both State and County license when he moves his business to another county.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 6, 1932.

Hon. Alex Brantley,
Judge of Probate,
Troy, Alabama.

Under Section 284 of the Constitution of Alabama, 1901, if an amendment election is held on the same day of any general election, then, in that event the election officers for the general election shall also hold the amendment election. If held on any other day, then officers for the amendment election must be appointed as other elections.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of April 6, 1932, in which you state:

"Enclosed I am sending you a copy of the official ballot containing the three proposed amendments to be voted on May 3, 1932."

You request my opinion:

"Please let me know if the same officers appointed to hold the Primary Election to be held on May 3, 1932, will hold the amendments election on that date also, and if one set of ballot boxes will suffice."

I call your attention to Section 284, Constitution of Alabama, 1901, and that part of Section 284, supra, which refers to holding elections on amendments, is as follows:

"If such election be held on the day of the general election, the officers of such general election shall open a poll for the vote of the qualified electors upon the proposed amendments; if it be held on a day other than that of a general election, officers for such election shall be appointed; and the election shall be held in all things in accordance with the law governing general elections. In all elections upon such proposed amendments, the votes cast thereat shall be canvassed, tabulated, and returns thereof be made to the secretary of state, and counted, in the same manner as in elections for representatives to the legislature. * * *"

You will note if such amendment election is held on the day of a general election, the officers for such amendment election shall be the same as the ones appointed to hold the general election, but if held on any other day, the officers for such amendment election shall be appointed. I construe this to mean that you must appoint election officers for each separate amendment election, but there is nothing which prohibits you from appointing the same officers for the amendment election as those who will hold the General Primary Election on May 3rd, as the Primary Election is to be held on the same day as the amendment election.

Answering your second inquiry will say it is my opinion you will have to provide separate ballot boxes from the ones used in the Primary Election, as the amendment election is a separate and distinct election from the Primary Election.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 6, 1932.

Hon. F. A. Walker, Chairman,
Democratic Executive Committee,
Hurtsboro, Alabama.

The date fixed by the Democratic Executive Committee, March 1, 1932, as the last day which any candidate may qualify for any office to be voted on in May Primary, applies also to candidates running in said Primary for county offices.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of March 23, 1932, in which you state:

"At the last meeting of the Russell County Democratic Executive Committee a motion was made, seconded and passed that the date of qualifying for county offices be set up from March 1st to April 1st. The Committee thought it was in their power to do this."

You request my opinion:

"Has a County Democratic Executive Committee the authority to change the final date for qualifying as candidate in the coming primary?"

Answering your request, I have before me a copy of the resolution passed by the State Democratic Executive Committee fixing the date of the Primary on May 3, 1932, and among other things, setting the date for qualification of candidates entering such Primary, and in the fifth paragraph of said resolution I find the following:

"5. That candidates for nomination or for election for all of said offices, shall on or before March 1st, 1932, file with the Chairman of the State Democratic Executive Committee in all offices except county offices, and in county offices with the Chairman of the respective County Democratic Executive Committees, a declaration of candidacy as follows:"

I am of the opinion the date set by the State Democratic Executive Committee, viz., March 1, 1932, as the last date on which a candidate for any office to be voted on in said Primary, may qualify, applies to County as well as State offices.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 6, 1932.

Hon. Joe Rollins,
Sheriff, Houston County,
Dothan, Alabama.

Sheriff—has authority to purchase supplies for the jail without having to advertise for bids.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of February 16, 1932, in which you request my opinion as follows:

> "I have been informed by the county that I have no authority to purchase supplies, such as bed clothing and equipment for the House County Jail without first getting sealed bids and submitting them and letting them be passed on by the County Commissioners.
>
> "Lots of times emergencies come where I have to have supplies and haven't time to wait for the Commissioners to go into session."

You ask me to advise you whether or not you have to comply with the ruling set out above by the Commissioners Court.

In my opinion it was never contemplated by the Legislature in the passage of Section 4808, Code of Alabama, 1923 which is an old statute having been the law for many years, that if a Sheriff of a County under its provisions, should need a box of compound cathartic pills for a prisoner or prisoners confined in his jail, that he would have to advertise for bids and wait to ascertain the lowest bidder before he could supply them. No doubt by this time the prisoner would either be dead or would not need them.

I think the Sheriff is clothed with the authority to purchase supplies for the jail and under the law referred to above, it is his duty to do so, and when he presents his bill for such supplies for the jail, if the articles

are reasonable and the price reasonable, it is the duty of the Court to allow said claims.—**116 Ala. 214.**

The sheriff is made the custodian of the jail by Section 4801 and is held responsible for the safe-keeping and welfare of the inmates.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 6, 1932.

Hon. M. T. Maxwell,
Clerk, Board of Revenue,
Tuscaloosa, Alabama.

All officers and employees of hospitals, and all State officers and employees are exempt from road duty under an Act approved July 23, 1931, (General Acts, 1931, p. 644).

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of March 31, 1932, in which you request my opinion as follows:

> Is there any law that exempts employees of the Alabama Insane Hospitals from paying road tax. Also Government employees, such as mail carriers, office workers, etc?

Answering your inquiry, all employees of the Alabama Insane Hospitals are exempt under an Act approved July 23, 1931 (General Acts 1931, p. 644) and the portion of said Act to which we refer, is as follows:

> "* * * all officers and employees of hospitals in Alabama."

I find no law exempting mail carriers. I do not exactly understand what you mean by "office workers," etc. If, however, you are referring to State officers and employees my answer is in the affirmative, and the part of the act, supra, which refers to this is as follows:

> "* * * all state officers and state employees."

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 6, 1932.

Hon. Thos. S. Woodroof,
Solicitor, Limestone County,
Athens, Alabama.

County Depositories—Location, bond, treasurer in lieu thereof.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of January 4, 1932, in which you inquire as follows:

1. Does the Board of Revenue of Limestone County have the right to designate a bank not located in the county as depository for said county?

2. If the bank designated refuses to give bond for the funds of the county, has the Board of Revenue the right to pay for the bond out of the county funds?

3. If a treasurer is appointed in lieu of said depository under Section 322, Code of Alabama, 1923, what is the length of his term of office?

I am of the opinion that your first question should be answered in the negative. Construing Sections 312 to 324, inclusive, of Article 2 of Chapter 17, Code of Alabama, 1923, in pari materia, it follows that a county depository selected in compliance with said Article should be a bank located within the territorial limits within the county. Section 322 specifically provides that if the Board of Revenue or Court of County Commissioners is unable to designate any depository for the county funds **in their county by reason of their inability to secure from any bank within its limits** terms for the handling of the county funds, etc., then some individual may be appointed in lieu thereof.

I am of the opinion that your second question should also be answered in the negative. The bank so designated as county depository is not a county officer within the contemplation of Section 2659, Code of Alabama, 1923. It is a mere contractual agency to perform the functions of a treasurer.—**Compton vs. Marengo County Bank,** 203 Ala. 129. Therefore, counties cannot pay the premium on the bond of county depositories under said section.—**Biennial Report Attorney General,** 1926-28, page 464. Further, the premium bond of said depository cannot be paid under Section 2 of an Act approved July 3, 1931 (General Acts, 1931, page 557) as same, in my opinion, is applicable only to instances that were not otherwise heretofore provided for as regards county employees entrusted with the handling of public funds.—**Opinions Attorney General,** 1931, Book 7, page 146 (Office Edition).

In answer to your third question, I am of the opinion that the term of office of an individual designated as treasurer in lieu of a county depository, under Section 322, Code of Alabama, 1923, shall not exceed one year. Said section must be construed in pari materia with Section 316, and when this is done the provisions of Section 316 would prevent the appointment of an individual as county treasurer for a longer period than one year. While Section 322, supra, allows a certain discretion to the county governing body, it does prevent the selection of an individual to act as treasurer for a longer period than one year.—**Jenkins vs. State ex rel Watson,** 123 So. 31; **Biennial Report Attorney General,** 1928-30, page 405. The discretionary power in Section 322, supra, would, in my opinion, allow the appointment of a treasurer for any term definite or conditional, not to exceed one year.

In connection with the above, I wish to refer you to Biennial Report Attorney General, 1928-30, page 405, and also to opinions rendered to the Judge of Probate of Henry County, November 19, 1931, and to the Marengo County Board of Revenue, November 27, 1931, copies of which are herewith enclosed.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 6, 1932.

Hon. J. H. Hard, Jr.,
Examiner of Accounts,
CAPITOL.

Before the State can be required to pay costs in condemnation proceedings where property is sought to be condemned, which was used in transporting liquors, there must be a decree rendered against the State.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of April 1, 1932, in which you state:

"A register of the Circuit Court in Equity of a certain county in the State has filed a claim against the State to be paid under Section 4785 of the Code of Alabama, 1923. On requesting him to furnish this office, in support of his claim, with a copy of the decree rendered in this case, reply is had from him as follows:

'There was no decree written at length awarding the costs against the State, or anyone. The Bench Note was as follows: "Dismissed by Complainant." In ordinary cases this carries the costs as I take it.'

"Giving particular regard to the condition upon which the cost bill in condemnation proceedings may become a charge against the State, found in the Code Section mentioned, and which, for your ready reference, is submitted as follows:

'If a decree shall be rendered against the State, the costs shall be paid out of the law enforcement fund provided in this article.'

"This being a proceedings in Equity the Judge had the discretion to apportion the costs as his judgment might determine. (See Section 6655 of the Code)."

You request my opinion:

"Please advise whether, in the absence of a decree being rendered against the State, the cost bill is a proper charge against the State."

It is my opinion the costs in a proceeding to condemn personal property that has been used in transporting prohibited liquors, cannot be paid by the State under Section 4785 of Alabama, 1923, unless there is a decree of the court rendered against the State. This portion of Section 4785, supra, is as follows:

"* * * if a decree shall be rendered against the State, the costs shall be paid out of the law enforcement fund provided for in this article. * * *"

Section 3734, Code of Alabama, 1923, which governs costs and fees is, in part, as follows:

"The law of costs must be deemed and held a penal law, and no fee must be taken but in cases expressly provided by law. * * *"

Lee, Sills, et als. vs. Smyley, 16 Ala. 775;
Harbor Master and Port Warden of Mobile vs. Captain Southerland, 47 Ala. 511.

I call your attention to the fact that under Section 6655, Code of Alabama, 1923, this being a proceeding at equity the judge could have apportioned the costs as his judgment might determine. In other words, he could have rendered a decree against the State as the statute directs, or he could, if he thought it equitable, have said that on the payment of all or any portion of the costs, the claimant could have the property in question delivered to him.

Hudson vs. Kelly, 70 Ala. 393.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 6, 1932.

Hon. W. H. Cantrell,
Judge of Probate,
Hamilton, Alabama.

The sheriff in removing a prisoner from one county to another for trial must follow strictly the law and statutes relative to removals.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of April 13, 1932, in which you request my opinion as follows:

"If the sheriff has a party caught and put in prison just across the county line, a distance from his own county line, about one mile to the jail in the adjoining county, can he charge his county for going after the said prisoner?

"We are having such bills as above presented for payment very often. The bills presented are as follows:

Car fare	$5.00
Sheriff fee	3.00

"Total bill for driving just about one mile $10.00. Such has become very often, and I am of the opinion, that such a charge is not a legal one.

"If a person becomes insane, and there is not room for him at the Insane Hospital, and he is put in jail, is it the duty of the County to pay a feed bill for the time the said person is in jail?"

The sheriff, in order to be entitled to pay for removal of a prisoner from one county to another for trial, must follow the direct provisions of Sections 3743 to 3746, both inclusive, Code of Alabama, 1923, and he is not entitled to pay for guard unless he has followed the provisions of Section 3746, supra. I find no authority of law for the charge contained in your request for $2.00 for deputy. The parties charged with the duty of passing upon these claims should be the judge of what is a reasonable charge for such service and only allow claims in an amount reasonable and just.

I am enclosing you an opinion rendered by this office June 15, 1931, to Hon. R. L. Shamblin, Sheriff of Tuscaloosa County, which answers your second inquiry.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 6, 1932.

Hon. Jas. T. Masterson, Chairman,
Board of Registrars,
Moulton, Alabama.

Elections—Meetings of the Board of Registrars.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of April 6, 1932, requesting an opinion relative to the meetings of the Board of Registrars during the year 1932, as many persons are making calls upon the Board who are just now becoming twenty-one years of age and wish to qualify so as to be able to vote at the coming primary and general elections.

I am of the opinion that the time fixed for the regular registration is between October 1st and December 31st, 1927, and each two years thereafter, as is provided for by Section 375, Code of Alabama, 1923, as amended by an Act approved August 20, 1927 (Acts 1927, page 274); and that a special registration may be had in addition to the regular registration as provided for in Section 376, Code of Alabama, 1923, as amended by an Act approved August 27, 1927, (Acts 1927, page 274).

Section 375 of the Code of Alabama, 1923, as amended by an Act approved August 20, 1927 (General Acts, 1927, page 274) makes provision for the regular session of the Board of Registrars for the various counties of the State and is as follows:

> "375. Board of Registrars to Hold Fixed Meeting and Give Notice Thereof. The Board of Registrars in each county shall visit each precinct at least once and oftener if necessary between October first and December thirty-first, 1927, and each two years thereafter to make a complete registration of all persons entitled to register, and shall remain there at least one-half a day. * * *"

You will note from the section above quoted that the time fixed for the general registration is between October 1st and December 31st, and each two years thereafter.

The only other time at which the board is authorized to make registration other than that provided above is under Section 376, Code of Alabama, 1923, as amended by an Act approved August 20, 1927, supra, which is as follows:

> "Special Registration. In addition to the regular registration provided in this article, the courts of county commissioners, boards of revenue, or other courts of like jurisdiction of the several counties may make an order requiring the books of registration to be opened

for ten working days during the month of January, 1921, and each two years thereafter, for the purpose of registering voters, except in counties having more than one hundred and fifty thousand population, as shown by the last federal census of any succeeding federal census, in which counties the Board of Registration shall be opened on the second Monday in December, 1928, second Monday in February, 1929, second Monday in April, 1929, second Monday in June, 1929, second Monday in August, 1929, and every two years thereafter and remain in session six days at each of such sessions for the purpose of registering voters."

You note from the above section that a special registration may be had in addition to the regular session provided for in Section 375 as amended, supra. This must be on the order of the Court of County Commissioners, Board of Revenue or other court of like jurisdiction in the several counties except in counties having more than 150,000 population as shown by the last federal census or any succeeding federal census. This section provides that under the order referred to above the books of registration may be opened for ten working days during the month of January, 1921, and each two years thereafter for the purpose of registering voters, and there being no other provision this special registration would have to be held in the month of January of the year designated and at no other time.

It might be well to state in this connection that Section 375, Code of Alabama, as it now appears in the code is intended to regulate special registration, and provides that a special registration might be had in the month of July in the year 1921 and each two years thereafter, but as amended and quoted above it is changed to January instead of July.

See Opinions Attorney General, 1926-28, page 670.

In regard to your specific case, it would be impossible for persons becoming 21 years of age since the last meeting of the Board of Registrars to register in order to be qualified to vote in the coming primary and general election of this year.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 6, 1932.

Hon. G. H. Howard,
Judge of Probate,
Wetumpka, Alabama.

1. Probate Judge is authorized to delived a pension warrant only to the payee or to another reliable citizen of the County on the written request of the pensioner and on the affidavit of such citizen that

at the time of such delivery the pensioner is actually living in the county and is physically unable to appear before the Probate Judge, and at time of such delivery pensioner must execute receipt showing his postoffice address and where and with whom residing.

2. All undelivered pension warrants must be returned by the Probate Judge to the Auditor's office within 30 days.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of January 12, 1932, in which you state:

"On the pension roll of this County is a pensioner who owns a home in this County but lives with her children. Her children live in different parts of the State, and one lives out of the State. She is at present with the child who lives out of the State. She sends us an order for her pension warrant and states that she is visiting out of the State. Kindly advise us if we can deliver her warrant to her on an order, while she is out of the State, and also whether or not we can continue to deliver her warrant from this County under the conditions set out above."

In reply I beg to advise that in my opinion there is no authority of law under which a Probate Judge may deliver a pension warrant where the pensioner is not living in the County at the time of such delivery.

There are two methods provided for the delivery of such warrants, to-wit: delivery to the payee in person as provided by Section 2957, Code of Alabama, 1923, and delivery to a reliable citizen of the County in which the pensioner resides on the written request of the pensioner and on the affidavit of such citizen that the pensioner is at the time of such delivery of warrant actually living in the County and physically unable to appear in person before such Judge of Probate as is provided for by Section 2959, Code of Alabama, 1923.

Section 2957 provides that the Probate Judge shall return to the Auditor's Office all undelivered pension warrants within thirty days.

Section 2961 provides that the Probate Judge is expressly prohibited from delivering to any payee the pension warrant who is at the time of such delivery residing outside the State and has no fixed abode within the State, and in case of absence from any cause for a period of twelve months, the name of the pensioner shall be stricken from the pension list. This Section further provides that on the return of such pensioner to the State where affidavit is made that such return is permanent, the name of such pensioner shall be restored to the pension rolls without further proof, but in all cases which have been absent from the State for more than twelve months they shall comply with all requirements of law as to resi-

dence, as are required of pensioners making original application to be placed on the pension rolls, and no pensioners shall be entitled to any quarterly allowance during the time so stricken from the roll.

It appears from the foregoing that the Probate Judge is without authority to issue the pension warrant on an order under the facts stated by you because the requirements of Section 2959 cannot be met.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 6, 1932.

Hon. Bart B. Chamberlain,
Circuit Solicitor,
Mobile, Alabama.

Constitutionality—Rules and Regulations of State Board of Agriculture Regulation No. 72 of Live Stock Sanitary Board valid.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of April 15, 1932, in which you request my opinion as to the constitutionality of Regulation No. 72 of the Live Stock Sanitary Board duly enacted by the State Board of Agriculture. Said regulation provides as follows:

"Cattle, mules, horses or asses in inactive tick infested areas or in free or active acreas where there are insufficient official inspectors to guard the border lines of such free or active area, shall be moved into Alabama.

"In all cases where cattle, horses, mules or asses are to be moved into Alabama from active tick eradication areas the certificate for such movement shall be issued by a federal inspector.

"Dipping stations in inactive tick infested areas can not clean cattle of fewer ticks in order to move the cattle in Alabama. Cattle, horses, mules and asses out of inactive tick areas can not pass through tick infested, or non-dipping stock yards into Alabama.

"Adopted July 15, 1931, by the State Board of Agriculture."

I am of the opinion that said regulation is constitutional and valid.

Section 28 of the Agricultural Code of 1927 provides that it shall be the duty of said Board of Agriculture to make and promulgate reasonable

rules and regulations necessary to carrying out of objects and purposes of the regulatory work required by law to be executed by the Commissioner.

Section 563 of the Agricultural Code of 1927 provides that the said Board of Agriculture shall have full power to make or **enact such rules and regulations as may be deemed necessary for governing the movement, transportation or disposition of livestock that may be quarantined as hereinafter provided on account of being affected with, or exposed to, a contagious or communicable disease** on account of being infected or infested with the carrier or carriers of the cause of a contagious, infectious or communicable disease of livestock, etc.

The fact that conditions would naturally and in all probability arise which could not be foreseen, and that the administration of the law would be one coming peculiarly within the province of scientific experts, the Legislature, out of necessity, wisely left to the members of the board the making of such rules as would promote the efficient administration of the law. —**State vs. McCarty**, 5 Ala. App. 212, 59 So. 317.

That the Legislature may confer authority on governmental agencies to make rules and regulations the violation of which will support a criminal prosecution, when the statute denounces the act as a crime, is settled beyond question.—**Curles vs. State**, 16 Ala. App. 62, 75 So. 268.

Section 592 of the Agriciultural Code of 1927 provides as follows:

> 592. Misdemeanor.—Any person, firm or corporation violating any section or provision of this Article, or the rules and regulations of the Board, shall upon conviction be fined not less than Ten ($10.00) Dollars nor more than Five Hundred ($500.00) Dollars and may also be imprisoned at hard labor for not more than six months.

Said act denounces a violation of the rules and regulations as a crime. The power of the board to make said regulations is given by Section 563, supra. The regulation does not go further than said section permits.

Said regulation 72, supra, is not in contravention with Section 569 of the Agricultural Code of 1927, which provides the method whereby cattle may be brought into the State of Alabama, but, in my opinion, is an additional requirement that must be met before cattle may be brought into this State. The making of said regulation is clearly within the power of the State Board of Agriculture.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 6, 1932.

Hon. Jos. H. James,
Solicitor, Fourth Circuit,
Greensboro, Alabama.

Private ponds and reservoirs wholly on the lands of the party using them do not come under the general band so far as catching fish is concerned as running streams such as creeks, rivers, etc.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of April 16, 1932, in which you request my opinion as follows:

"Members of a hunting and fishing Club in Hale County have asked that I get them an opinion on whether or not it is illegal to use gill nets in a pond which is on land leased by them. This pond or lake is entirely surrounded by their leased lands, with the exception that water which emanates from springs which feed the pond runs from the pond to the river in a small stream.

"They wish, of course, to know whether it is legal for the members of this club or their guests to use gill nets in this pond for the catching of such fish as are permitted by law to be caught in such nets."

It is my opinion if the ponds or reservoirs are wholly on the lands of the club you refer to, whether they be owned in fee simple or leased by said club, they would come under the provisions of Section 4063, Code of Alabama, 1923, and use of such devices as you mention, in these ponds or reservoirs, would not be unlawful. Section 4063, supra, is as follows:

"4063. Exceptions to preceding section.—The preceding section shall not apply to ponds and reservoirs wholly on the premises of any person using such device; nor to the salt waters of the State; nor to any waters in the state in which the tide ebbs and flows; nor to small seines not more than twelve feet in length and four feet in width, known as minnow seine for catching minnows to be used for bait only."

In order to fully understand the above section, read the one preceding, which is Section 4062, Code of Alabama, 1923.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 6, 1932.

Hon. E. L. Hurst,
Judge of Probate,
Gadsden, Etowah County, Alabama.

Under Veterans License Exemption Act of 1931, if the person applying for the benefits of the Act is qualified under the Act, and if the several licenses inquired about are such licenses as are included in the Act, the Veteran may apply his credit to one or more licenses, just so the aggregate does not exceed $25.00.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I beg to acknowledge receipt of your letter of February 22nd, as follows:

"In reply to your letter of 2-19-32, I will thank you to give me your opinion on the following:

"If an ex-service man with the 10% exemption as required by law running a business that requires license on cigars, cigarettes, soft drinks, lunches, be entitled for the reduction of $25.00 State and $25.00 County on the total amount of said licenses, or would only be exempted one license, if so, which one would he be exempted on. Example:

	State	County
"Cigars	$10.00	$5.00
Cigarettes	40.00	20.00
Soft Drinks	2.50	1.25
Lunches	10.00	5.00
	$62.50	$31.25
"Exemption	25.00	25.00
Amount due	$37.50	$6.25

"Would ask that is this the correct meaning of the law as passed by the Legislature, and approved July 2, 1931."

You inquire about the Veterans License Exemption Act passed by the Legislature of 1931.

The Veterans License Exemption Act provides for certain exemptions for a certain class of persons. The first inquiry would be whether or not the person applying for the exemption is such a person as described in the Act. If the person is such a person as is entitled to the benefits of the Act, the next inquiry would be whether the exemption the man desires is such an exemption as is contemplated by the Act; in other words, whether

the license or fee is such a fee or license as is contemplated in the Act. If the person is qualified to receive the benefits of the Act and the license inquired about is such a license as is contemplated in the Act, the next inquiry would be: To what extent is the exemption to be granted, that is, in what amount? The Act provides that the exemption shall not be greater than $25.00. Cigar license, cigarette license, soft drink license and lunch license are such licenses as are covered by the veterans license exemption Act. The veteran would be entitled to an exmption of not exceeding $25.00. If the veteran is qualified and if the licenses are such licenses as are covered by the Act, the credit of $25.00 may be "split" as many ways as the veteran sees fit to so apply them, so long as the total credit does not exceed $25.00. County license and State license are included in the Act. In the example set forth in your letter upon payment of $37.50 the veteran would be exempt so far state license is concerned, and upon payment of $6.25 the veteran would be exempt so far as county license is concerned.

Such is my understanding of this Act.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 6, 1932.

Hon. S. R. Butler,
State Tax Commissioner,
CAPITOL.

Refiner of gasoline in Alabama held to be manufacturer and as such not subject to gasoline taxes required of distributors, retail dealers and stores as defined in the various Gasoline Acts.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of February 1st in which you make the following inquiry:

"The Coastal Refining Company of Mobile, Alabama, which is now about ready to begin operations, is unwilling to accept a ruling by the Gasoline Tax Department that the refinery will have to pay the State tax on all gasoline sold in Alabama. The attorney for this Company holds that the refinery is not a 'distributor' as defined in Section 1, H. B. 2, Tunstall, approved January 4th, 1927.

"Your opinion on the above ruling by the Gasoline Tax Department is requested."

In reply I beg to advise that, in my opinion the answer to your question is, in a large measure, determined by the language of the statute. The Gasoline Tax Act of 1927 (Acts 1927, p. 16) makes the following definitions:

> "The term distributor shall include any person who engages in the selling of gasoline in this State by wholesale domestic trade, but shall not apply to any transaction by such distributor in interstate commerce.
>
> "The term retail dealer shall include any person herein defined as distributor who is also engaged in the selling of gasoline in this State at any place in this State in broken quantities.
>
> "The term storer as herein used shall include any person who ships gasoline into this State in tank quantities and stores the same and withdraws or uses the same for any purpose.

Section 2 provides that every distributor, retail dealer or storer of gasoline **as herein defined** shall pay an excise tax, etc. I interpret the words "herein defined" to apply both to the definition theretofore given in the Acts on gasoline, and also to the foregoing definition of distributor, retail dealer or storer.

Tax statutes must be strictly construed, and if there is any doubt as to the liability for the tax, then such doubt should be resolved in favor of the taxpayer.

The question here presents itself: Is a refiner of gasoline such distributor, retail dealer or storer of gasoline as to be liable for the tax provided by this and the various gasoline tax Acts. A refiner is a manufacturer. I take this fact to be so well accepted as to need no citation of authority. A refiner receives the oil in its crudest state and by certain processes produces the high grade products such as gasoline and benzine. The product produced is materially different from that which originally existed. Refining is a process of manufacture, and, therefore, in determining the liability for the tax we must determine the liability of the Coastal Refining Company as a manufacturer.

The right to manufacture includes, generally speaking, the right to sell. In a business of the nature of a manufacturing gasoline the storage in tanks is a necessary incident to the manufacture of gasoline, and such storage if in fact merely incidental to and as an integral part of the manufacturing process, is not such storage as contemplated in the Gasoline Act of 1927, above quoted. The language of the statute strictly construed would remove the Coastal Refining Company from the classification of storer. The Act declares that the term storer as herein used "shall include any person who ships gasoline into this state in tank quantities and stores the same and withdraws or uses the same for any purpose." Manifestly the Coastal Refining Company does not ship gasoline in this State

in tank quantities unless it engages in operations other than manufacturing which your letter does not indicate. I am, therefore, of the opinion that it is not liable as a storer of gasoline within the meaning of the Gasoline Tax Act on gasoline manufactured by it.

Neither is it a dealer. A dealer is one who buys and sells and almost uniformly it has been held in this State that the right to manufacture carried the right to sell, and buying the crude product and manufacturing it into something else would not constitute the person a dealer. Therefore, in my judgment, the Coastal Refining Company is not a dealer when it sells the product manufactured by it at the place of manufacture.

The inquiry, however, to which you particularly address your letter is whether this refinery is a distributor within the meaning of the statute.

The Act defines "distributor" as a person who engages in the selling of gasoline in the wholesale domestic trade. Distributor in this sense is a wholesale domestic trader. The term wholesaler and manufacturer have clearly defined different meanings. A wholesale dealer is one who purchases in large quantities, usually from the manufacturer, and sells, usually to the retail dealer. A common term is jobber or middle man. A manufacturer, as we have above defined, is one who takes the crude material and makes a finished product.

The tax is laid on every distributor, retail dealer, or storer as defined in the Act. This office has heretofore held this to be a privilege tax for the privilege of engaging in one of the operations named. The business of manufacturer of gasoline is not one of the vocations taxed.

The Act declares that "The term distributor shall include any person who engages in the selling of gasoline in this State by wholesale domestic trade" and further declares that every distributor, retail dealer or storer of gasoline as herein defined shall pay an excise tax of two cents per gallon upon the selling, distributing or withdrawing from storage for any use gasoline as defined in this Act.

With the exception of the storage features this is substantially the language of the 1923 Act, which has since been added to conform to the 1927 Act.

In passing upon the 1923 Act, in an opinion rendered March 22, 1923, Biennial Report 1922-1924, p. 58, this office said: "The Act approved February 10, 1923, requires an excise tax to be paid by persons, selling gasoline in this State. The amount of this tax is measured by the number of gallons sold."

> "The tax is for the privilege of engaging in that particular business and is not a sales tax collected from and required to be paid by the purchaser of gasoline nor is it a tax imposed on the article itself. In principle, there is no difference between the license tax heretofore

required to be paid in this State by operators of filling stations and the present tax which is measured by the number of gallons sold, both being an excise tax required for the privilege or right to conduct that character of business."

The Act of 1927 contains this provision "but shall not apply to any transaction by such distributor in interstate commerce," and "provided that this excise tax shall not be levied upon the sale of gasoline in interstate commerce."

Answering an inquiry from the State Tax Commission, dated January 15, 1932, this office held that refinery located in Alabama withdrawing gasoline from storage thereat, for shipment into another State where order is received and approved by the refinery before shipments is made into such other State or foreign country, is not subject to State gasoline tax on such withdrawals and shipments.

The opinion contained this observation: "The withdrawal from storage in such instance is but a part of the 'assembling' process to send the commodity on its interstate journey."

The question then presented is this. Did the Legislature intend to levy a tax on a manufacturer, for the privilege of selling his products measured by the number of gallons manufactured and sold in Alabama and exclude from such measurement the amount sold to persons without the State of Alabama.

In the opinion of March 22, 1923, holding the tax to be a privilege tax for the privilege of engaging in such business is correct, and since then that has been the construction placed on the Act by this office and by the administrative authorities, such a position is untenable. Manifestly the sale is made in Alabama in either event, even though the product sold would be shipped into another State. Hence, in the absence of the statute, exempting sales made in interstate commerce, if the manufacturer is subject to the tax in one instance he is subject in both. The Legislature though by definite words said the tax should not apply to "any transaction by such distributor in interstate commerce." I do not believe the Legislature intended to levy a tax measured by all the gasoline sold in Alabama and then except from such measurement that part which though sold in Alabama was sold for shipment into another State.

It would appear that the Legislature in defining the term distributor did not have in mind manufacturer, but was speaking of wholesalers, and the provisions relative to interstate commerce were inserted to prevent any possible attempt to tax products actually in interstate commerce—that is while on their interstate journey before coming to rest in the State or in transit through the State. In fact it is doubtful, if this tax applies to a manufacturer in Alabama and is an excise or privilege tax upon the manufacturer as a distributor, the sale being made in Alabama, if the interstate commerce provisions of the statute would be applicable.

It is hardly reasonable to believe that the Legislature intended that a manufacturer in Alabama would be required to sell and ship within Alabama at one price, to-wit: the manufacturer's price plus the tax, and sell within Alabama and ship without at a different price, the manufacturer's price alone.

Moreover a discrimination in fact against the Alabama wholesaler who purchases from the Alabama manufacturer would result. The distributor (in the sense of wholesaler) pays the tax on the amount sold or withdrawn from storage when he buys without the State. He does not pay on amounts lost by evaporation, leakage, loss from fire or other causes. If though he buys from an Alabama manufacturer, and the manufacturer is required to pay the tax on his sales, then the wholesaler, pays the tax in effect, not only on the amount sold or withdrawn from storage by him, but on the amount purchased. If as might happen his entire stock was destroyed by fire or otherwise, he would in effect be required to pay the tax on all of it, the Alabama manufacturer having included the same in his price, whereas if bought without the State he would only pay the manufacturer's price.

In Commonwealth v. Campbell, 33 Penn. State, 360, the Supreme Court of Pennsylvania said:

> "Every manufacturer must sell his wares; but he is not therefore classed as a 'dealer' in them, under the Act of 1846. That law distinguishes between dealers and manufacturers; and, therefore, we must do so. A manufacturer or mechanic is taxed for selling his wares, only when he keeps a store or warehouse away from his manufactory."

Taylor v. Vincent, 47 Am. Reports, 338, the Supreme Court of Tennessee said:

> "We have carefully considered the question and our conclusion is that a manufacturer who sells articles manufactured by him, is not a dealer in such articles."
>
> "If the Legislature intended to tax manufacturers * * *", they should have been explicit, in using appropriate language or terms. The court will not by construction include persons under the criminal statute unless the plain import of the terms of the statute includes them."

In General Refining & Producing Company v. Davidson County, 201 S. W. 737, the Supreme Court of Tennessee, in passing on a statute in many respects similar to the Alabama statute said the Act provides:

> "Each and every person, firm, partnership, corporation or local agent, having oil depots, storage tanks, or warehouses for the purpose

of selling, delivering or distributing oil of any description * * * shall pay a privileg tax as follows:"

The agreed statement of facts shows that the company:

"Makes or refines the oil, keeps tanks in which it stores the oil, and sells the oil at the manufacturer's price. The wholesaler buys the oil, stores it in tanks and sells it at the wholesale price for a wholesaler's profit only. The retail dealer buys oil, stores it in tanks and sells at the retail price for the retail profit only."

"From this statement it will be observed that complainant uses storage tanks for the purpose only of storing crude oil and the manufactured products, as containers for the purpose of confining the oil in order that it may sell it as a manufacturer. Oil is an elusive substance which must be confined in tanks as containers in order to preserve it. * * * Thus it will be seen that the tanks and the storage of the oil in them are integral parts of complainant's business **as a manufacturer.** It cannot be denied that refined oil is stored in tanks for purposes of sale, but it is agreed that the sale contemplated by the complainant is a sale for the purpose of realizing the manufacturer's profit. * * *"

The Court held that the Oil Company was not liable for the tax.

From the foregoing I am led to the conclusion that a manufacturer engaged strictly in manufacturing, and selling only at the place of manufacturer, gasoline manufactured by him, for the manufacturer's profit, and not doing business in any other manner is not liable for the tax levied on distributors.

I also call your attention to Nash v. State, 110 So. 797; 37 Corpus Juris, p. 224; State v. San Patricle, 17 S. W. (2nd Series) p. 160.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 9, 1932.

Hon. S. R. Morgan,
Treasurer of Coffee County,
Elba, Alabama.

School teachers exempt from road duty.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of February 17, 1932, in which you request my opinion as follows:

> Are rural school teachers exempt from road services in Alabama under an Act approved July 23, 1931 (General Acts, 1931, p. 645)?

It is my opinion that teachers engaged in teaching in any school within the State of whatever character are exempt from road duty. They may procure this exemption, if it is in a State school, from the principal of the school or from the county superintendent; if it be a school other than one supported by the State, the certificate must come from the president of the college; if it be a high school, from the principal of the school; it it will be a private school from the principal of this school or some one in charge. You will note that Section 1 of the Act approved July 23, 1931 (General Acts 1931, p. 645) says among other things, speaking of the exemption from road duty: "* * * all duly and regularly enrolled students in educational institutions and all teachers thereat who shall procure a certificate from the officer in charge of such institution to that effect."

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 9, 1932.

Hon. U. G. Davis,
Commissioner, DeKalb County,
Crossville, Alabama.

> Person though exempt from road service, if able-bodied and can perform manual labor, may be employed to do road duty and paid as other laborers.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of March 26, 1932, in which you request my opinion as follows:

> Can Section 1354, Political Code, be construed to prohibit me, as one of the Commissioners of DeKalb County, from hiring those mentioned as exempt to work on the public roads and pay them with the county's money?

I find no law that could prohibit you from employing persons who are able-bodied, though they be exempt from road duty, to work on the public

roads of your County. For instance, a number of men over the age of forty-five are as able, and more so oftentimes, to perform a duty and work than some are at twenty-five, and some young men under the age of twenty-one can do a better day's work than some others at the age of thirty. On the other hand you would not be justified in employing a man with one arm or a man with one leg, as it goes without saying he could not do a day's work as contemplated by the statute. However, I call your attention to the fact that Section 1354, Code of Alabama, 1923, does not govern the matter herein inquired about. It has been supplanted by an Act approved August 23, 1927 (General Acts, 1927, p. 393). See Section 164 of the Act, supra, which is as follows:

> "Section 164. Persons Exempt From Road Duty.—All women, and all men under the age of eighteen and over the age of forty-five years; all persons who have lost an arm or leg; and all persons who, by nature or disease, are rendered incapable of hard labor, who shall procure a certificate of such incapacity from the county board of health, are exempt from working on the public roads, but where there is no county board of health, the certificate of such incapacity from two reputable practicing physicians shall be sufficient. All employees of the State Highway Department, who are actually engaged in the service of the State Highway Department in the construction, maintenance, or repair of the State Highways shall be exempt from road duty of their respective counties. Provided that such employes so engaged shall present a certificate from the foreman or the person in charge of the work at that period, stating the above reason for exemption, but nothing herein shall be construed as exemtping the employes of the State Highway Department, as required by law, to perform the required road duty within each annual period but to provide exemption for such person, when road duty notice is served upon him at a time when his services are especially required in an emergency, by the State Highway Department."

I call your attention again to the fact that Section 1354, Code of Alabama, 1923, has been amended by an Act approved July 23, 1931 (General Acts, 1931, p. 645) and this amendment reads in part as follows: (Speaking of the exemption)—"All women; all men under twenty-one and over the age of forty-five years." Therefore, you will note that men are not required to perform road service until they have reached the age of twenty-one years. The limit of forty-five years remains the same.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 9, 1932.

Hon. Madison L. Smith,
Tax Assessor, Washington County,
Chatom, Alabama.

1. Tax Assessor is Member of the Board of Review.

2. Tax Assessor not entitled to extra pay as Secretary of the Board of Review.

3. Board of Review has no authority to employ timber estimator.

4. Taxpayer has right to file objection to assessment on or before the last Monday in May and to appeal from the final valuation fixed by the Board of Review to the Circuit Court.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of January 8, 1932, in which you state:

"(Acts 1923, p. 152, Section 50).

"Board of Review created; does the Tax Assessor sit as one of the Board, and vote as one of the Board or does he merely act as secretary for the Board?

"And does the Tax Assessor draw any pay for his services when acting as Secretary for the Board of Review?

"Also does the Board of Review have authority to hire a timber estimator, and have the timber estimated on a tract of land, where the taxpayer is objecting to his values as fixed by the Board?

"Where the taxpayer comes before the Board in April and attempts to lower his values below the preceding tax year, and the Board refuses to reduce his values below the preceding tax year, and has been no change in the condition of land or timber, and the taxpayer wants to take an appeal, does he file his objections same as in case of a raise by the Board and give bond in such case?"

In answer thereto I beg to advise that your first question is answered by Section 50, Acts 1923, page 152, which says:

"The members of the Courts of County Commissioners or Boards of Revenue other than the Judge of Probate together with the Tax Assessor are hereby constituted a Board of Review. * * *"

This clearly makes the Tax Assessor a Member of the Board of Review.

Answering your second question I know of no provision providing for pay to the Tax Assessor for services as acting as Secretary of the Board of Review.

Your third question was answered in an opinion under date of August 23, 1927, to Hon. W. E. Merrell, President, Board of Revenue, Shelby County (Biennial Report Attorney General 1926-28, in which it was said:

> "In reply will say that it is my opinion that the Board of Revenue of Shelby County is without any authority to pay an agent of the State Tax Commission for services rendered under his contract with the State Tax Commission, and, furthermore, that the Board of Revenue is without any authority to employ any man to assist in the assessment of taxes in the County."

Answering your last question I advise that there is no provision for the taxpayer to appear before the Board and make protest in April. The Board of Review as provided by Section 54 shall meet the second Monday in April to review, revise, correct, and fix assessment values. After this is completed the Tax Assessor gives notice by publication as provided by Section 56 that the Board will meet on the first Monday in June to consider such protests, which protests in writing must be filed with the Secretary on or before the last Monday in May. The Board of Review shall sit the first Monday in June to hear such protests as provided for by Section 57. At this meeting the taxpayer may appear in person or by agent or attorney and produce evidence in support of such objection. After the Board has finally fixed the valuation the Taxpayer may appeal as provided for by Sections 59 and 60.

You will note by that that the objections or protests are not made at the April meeting. At this time the Board fixes the values and notice is given by publication. The taxpayer has the same right to make objections to an assessment which is fixed the same as the previous year as to one which is raised, but his objection must be made after the Board fixes the value at its April meeting and these objections must be filed before the last Monday in May. If the Court overrules such objections in its June meeting then the taxpayer has the right to appeal.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 9, 1932.

Hon. J. G. Cuninghame,
Judge of Probate,
Grove Hill, Alabama.

Publication of list of registered voters—when made.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of February 17, 1932, in which you request my opinion as follows:

> Under the Acts of 1927 amending Section 387 in connection with registration of voters and publication of a list of qualified voters, I am required to publish this list on or before April 15th, and if any names are left off, then I am required to publish a supplementary list May 1st. Am I permitted to publish this list as follows: The first one before the 15th day of April and the second before the 1st day of May?

I see no reason why you cannot publish this list as soon as you are able to make a correct one. Section 387 as amended by an Act approved August 20, 1927 (General Acts 1927, p. 274) says among other things, you must publish this list on or before the 15th day of April, 1922, and each two years thereafter. You will note it does not specify just what date the publication shall be made, but does limit it to the last day on which it can be published, viz: the 15th day of April of that year.

Likewise the second publication must be made on or before the 1st day of May. Here May 1st is the last date on which it can be published, but may, in my opinion, be published sooner in that year if the probate judge is in a position to do so.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 11, 1932.

Hon. A. F. Harman, Superintendent,
State Department of Education,
CAPITOL.

Schools—Taking of school census in July of even numbered years is mandatory.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of April 28, 1932, in which you request my opinion as to whether or not the provision for taking school censuses in the State of Alabama as contemplated and provided for in the Constitution and statutes is mandatory or if the taking of said census may be at the discretion of the State Superintendent of Education.

I am of the opinion that the taking of the school census in July of even numbered years is mandatory. After considering the Constitution and the statutes this conclusion is apparent.

Section 268 of the Constitution of Alabama, 1901, provides as follows:

"The Legislature **shall** provide for the taking of school census, etc."

The various sections of the School Code of 1927 relative to the taking of school census, viz: 42, 79, 121, 167, 199 and 235, all use the word "shall" in connection with taking the regular biennial school census in even numbered years. Further, it is provided that additional census may be taken at the discretion of the State Superintendent of Education under certain conditions. Construing the constitutional provision and the sections of the School Code in pari materia, it appears that the taking of the school census in July of even numbered years is clearly mandatory.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 11, 1932.

Hon. D. F. Greene,
Deputy Supt. of Banks,
CAPITOL.

Banks and Banking—Voluntary liquidation, right to reopen and move location.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of April 16, 1932, which reads as follows:

"Suppose the directors and stockholders of a bank vote to voluntarily liquidate under Section 6409 et seq. of the Code, and after paying the depositors in full, they desire to sell the charter or their stock to other individuals who had put up, say $15,000.00 of capital, the bank in question having that much paid in capital stock, and the new stockholders desire to reopen, but to move the bank to another location in another city, under Section 6403 et seq. of the Code.

"We wish to know whether or not this would be legal. In other words, after stockholders of a corporation vote to voluntarily liquidate, can they dispose of their stock and a new lot of stockholders rescind the action of the former stockholders, and at the same time amend their charter, changing the name and moving the bank to another

location in another town or city to operate the bank in the new location?"

I am of the opinion that your question should be answered in the negative. The voluntary liquidation of a solvent bank is provided for in Article 6, Chapter 263 (Sections 6409-15) Code of Alabama, 1923.

Section 6411 specifically provides in part as follows:

"* * * upon the execution and delivery to the Superintendent of Banks of such bond and its acceptance by him, it shall be lawful for the bank to turn over its affairs to the liquidating agent so elected, and **it shall be unlawful for it to receive any further deposits.**"

This shows that after a bank has gone into voluntary liquidation, it cannot continue a banking business by receiving deposits and can only operate for the purpose of winding up its affairs. I know of no provision of law whereby a bank that has gone into voluntary liquidation and wound up its affairs, may reopen for the purpose of doing a general banking business.

Since a bank that has gone in involuntary liquidation is not capable of doing a banking business, said bank could not come under the provisions of Section 6403, Code of Alabama, 1923, which authorizes a company doing a banking business to move its office or place of business from one city or town to another city or town within the State.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 11, 1932.

Hon. A. F. Harman,
State Superintendent of Education,
CAPITOL.

County Schools—Employment of attorney by County Board of Education for collection of school fees.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of April 6, 1932, with a letter from Mr. M. L. Orr, Director of Teacher Training at Alabama State College for Women at Montevallo, Alabama, in which the following facts are stated: The Montevallo school is under the direction of the County Board of Education but is affiliated with Alabama College and serves as a Training School for stu-

dent teaching. You state that it is likely that suit will have to be brought against the patrons for nonpayment of school fees.

You request my opinion:

1. If suit is necessary, in whose name should it be brought?

2. In what County should it be brought?

3. Could the County Board of Education legally expend school funds for Attorney's fees incurred in the collection of such fees?

In answer to your first inquiry, I am of the opinion that suit should be brought in the name of the County Board of Education in which the school is located.

In answer to your second inquiry, I am of the opinion that suit may be brought in the county of the residence of the patrons who are liable for said fees or in the county where the act or omission may have been done or may have occurred.—**Section 10417, Code of Alabama, 1923.**

In answer to your third inquiry, I am of the opinion that the County Board of Education may expend its school funds for the employment of an attorney to assist in the collection of said fees.

Section 95, School Code, 1927, provides that all property, estate, funds, effects and claims of the county for school purposes shall be vested in the County Board of Education to be held in trust for the public school interests of the county or district.

Section 132 of the School Code, 1927, provides that the County Board of Education may sue and contract, which provision, of necessity, involves the liability of being sued. The authority to sue and to be sued, of necessity, carries with it the authority to employ and compensate counsel, when such Board is acting within the scope of its authority, and when counsel for such purposes has not been provided by law.—**Jack vs. Moore,** 66 Ala. 188; **Biennial Report Attorney General,** 1926-28, p. 418; **Opinions Attorney General,** Book 9, page 95, Office Edition.

The employment of counsel for the collection of such school fees is not otherwise provided for. Therefore, it naturally follows under the rule above set out that school funds may be expended for this purpose; provided, however, that employment of such counsel is necessary to the end of collecting the fees in question.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 11, 1932,

Hon. A. F. Harman, Superintendent,
State Board of Education,
CAPITOL.

County Board of Education—Conditions under which State Aid may be obtained for erection, repair or equipment of rural school houses.

Opinion by Assistant Attorney General McCall.

Dear Sir:

This acknowledges receipt of your letter of January 12, 1932 including letter from the County Superintendent of Education of Butler County, also reply thereto from the secretary of the Governor, also copy of resolutions of the Town of Georgiana and in connection with the foregoing this office has received certain correspondence from Hon. Earl M. McGowin, State Representative.

It appears that in October, 1921, the property upon which a public school building was erected at Georgiana, Butler County, Alabama was deeded to the town of Georgiana. Thereafter, in 1922, a building suitable for public school purposes was erected upon said property by the said town. For some years prior to September 30, 1927 (the date upon which the present Alabama School Code became effective) the public schools of Georgiana were being operated under the direction of a city board of education. Upon the Alabama School Code, 1927, becoming operative, the Georgiana public school system ceased being under the control of the City Board of Education and is now under the control of the county board. The legal title to the building and the property upon which it was erected has continuously remained in the town of Georgiana. The legal title to the said property was at no time in the City Board of Education of Georgiana. At the present time, there is a bonded indebtedness against the said property in the sum of $15,000.00 which debt is owing by the town of Georgiana.

You request my opinion:

"1. With the view of enjoying the benefits of Article XVIII (Sections 370-86, inclusive) "Alabama School Code, 1927, can the State accept from the town of Georgiana a deed for the Georgiana public school building and site?

"2. If the Georgiana public school building can be acquired by the State and if so acquired then can the Baldwin County Board of Education receive aid under Act No. 350, approved July 6, 1931 (Gen. Acts, 1931, p. 408)?"

In answer to your first question, will say that applications for State Aid for the erection, repair, or equipment of a rural school house building must be accompanied by a deed in fee simple to the number of acres of land set forth in the statute, which deed must be to the State of Alabama.—School Code of Alabama, 1927, Section 281. There is no objection to the town of Georgiana deeding the building and property upon which it is located to the State of Alabama in fee simple if and when it can do so. The State, of course, cannot assume the bonded indebtedness on the property. The County Board of Education may, if it chooses to do so, purchase the property outright with such funds as are legally available for the purpose. If the town of Georgiana executes a fee simple deed of such property to the State of Alabama, then an application for State Aid for its repair and equipment may be granted. You will observe that Section 372, School Code of Alabama, 1927, as amended by Act No. 350, approved July 6, 1931 (Gen. Acts, 1931, p. 408) reads in part as follows:

> "Nothing in this article shall prevent the granting of aid for the erection, repair and equipment of rural school house buildings on property already owned by the State* * *"

As it stands now, a deed from the town of Georgiana, subject to the outstanding indebtedness against said property, would not permit the granting of State Aid for further erection, repair, or equipment in connection therewith. This is for the reason that such a deed would not be in fee simple.

The foregoing also answers your second question.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 11, 1932.

Hon. E. J. Garrison,
Judge of Probate, Clay County,
Ashland, Alabama.

Judge of Probate—"Stationery"—a mimeograph machine is stationery.

Opinion by Assistant Attorney General McCall.

Dear Sir:

This acknowledges receipt of your letter of February 19, 1932.

You request my opinion:

"Under Section 9604, Code of Alabama, as amended by an Act approved September 6, 1927 (General Acts 1927, p. 693) is a mimeograph machine, for official use in the office of the Judge of Probate, classified as 'stationery'?"

In answer, will say that it is. The Supreme Court of Alabama has held that the word "stationery" as used in the above statute and kindred statutes means and includes typewriters.—Crook vs. Commissioners Court, 144 Ala. 505,

Opinions Attorney General, 1910-12, p. 220;
Opinions Attorney General, 1918-20, p. 105;
Opinions Attorney General, 1926-28, pp. 565-7;
Opinions Attorney General, 1928-30, pp. 186, 222, 439;
Opinions Attorney General, 1918, p. 396;
Opinions Attorney General, 1919, p. 303; 203 Ala. 128.

The reasoning in the case above cited leads me to believe that likewise a mimeograph machine should be classed as stationery.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 12, 1932.

Hon. G. H. Howard,
Judge of Probate,
Wetumpka, Alabama.

Elections—Exemption of persons permanently disabled whose taxable property does not exceed $500.00 from poll tax.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of April 23, 1932 in which you state that a party who has been permanently disabled since he was nineteen years old has his certificate of such disability which was issued in 1932.

You request my opinion as to whether or not said disability will exempt him from poll tax due prior to the date of his certificate.

The payment of all poll tax due is one of the conditions upon which a person is allowed to vote in Alabama.—Constitution 1901, Section 178.

Section 3022 (7) provides that all persons permanently disabled whose taxable property does not exceed $500.00 shall be exempt from payment of poll tax.

If the party in question has been permanently disabled since he became twenty-one years of age, and at no time had his taxable property exceeded $500.00, he would be exempt from the payment of all poll taxes past and present. At no time would any poll tax be due from him. As to proof concerning the above exemption, I wish to refer you to **Biennial Report Attorney General**, 1926-28, p. 523 which holds that the Judge of Probate is judge as to whether or not proof of said exemption exists.

Said party who is permanently disabled should file claim for exemption each year, because his taxable property may be in excess of $500.00 and if so he would not be exempt from poll tax.

In passing on the above proposition I advise that before you exempt said party from payment of all back poll taxes, you should be thoroughly satisfied that said party was totally disabled since he became twenty years of age and at no time has his taxable property exceeded $500.00.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 16, 1932.

Hon. Eugene B. Henry,
Commissioner of Licenses,
117 Courthouse,
Birmingham, Alabama.

Schedule 127, Acts 1919, page 282, Section 361, provides for license on bottling works only for full year.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of April 6, 1932, in which you state:

"A local bottling company has applied to me for a half year license under the 1929 Revenue Laws of Alabama, page 230, Schedule 25, and under Section 350 at page 325 of said Revenue Laws.

"Will you please advise me at your earliest convenience, whether or not I am authorized to issue a half year license as applied for."

In reply I beg to advise that Schedule 127, Acts 1919, page 282, Section 361, being Schedule 25 of the Revenue Compilation of 1929, provides for licenses on different types of bottling machines "operated at

any time during the license year." It is therefore my opinion that there is no provision for a half year's license.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 16, 1932.

Hon. E. J. Garrison,
Judge of Probate, Clay County,
Ashland, Alabama.

1. Each separate subdivision as used in Act No. 584 approved July 30, 1931, Acts 1931, page 671, means each forty acre tract unless taxpayer owns subdivisions smaller than forty acres, in which event such subdivisions should be shown.

2. Payment should be based on the current year tax valuation.

3. Such payment not due until work completed.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of February 10, 1932, in which you make the following inquiries:

"1. I desire to know what construction you give upon that part of the act which reads as follows: 'in which the name of the owner shall be entered on each separate subdivision, **together** with the **assessed value thereof.**' Does this mean that the Assessor shall put the assessed value on each forty acres of land as well as the name of the owner of said forty? In other words, is the Assessor required to put the owner's name and the assessed value of each forty or part of forty owned by the taxpayer?

"2. As to the amount to be paid for this work, by the commissioners court, which is governed by the aggregate assessed value of real and personal property. Is the Court to be governed by the assessment made for the year covered by the plat book for that year, or must the Court be governed by the value for the preceding year?

"3. Is the payment to the assessor for the work done on the plat book due before the plat book is fully completed? The Tax Assessor in this County has filed a claim for making plat book but

as yet no assessed values are placed thereon as I understand, nor have the assessed values for this year been completed or confirmed."

In answer to your first question, I advise that the statute provides that the name of the owner and the assessed value shall be entered on each separate subdivision. The smallest regular subdivision shown on the form prescribed by the Tax Commission is forty acres. However, if a person actually owns less than forty acres, such tract would be a separate subdivision within the meaning of the statute, and it would be necessary for the Tax Assessor to make such entry showing such ownership of tract smaller than forty acres. Where a taxpayer owns more than one forty acre tract a proper entry to show that the ownership and valuation covers each forty acre tract would be necessary although a proper designation may be adopted in such cases to make it unnecessary for a separate entry to be made as to each of the forty's.

Answering your second question I advise that payment should be made for the revision based on the assessed value of the County for the year in which the revisions are made.

In answer to your third question I advise that until the work is done I would not presume that there is any liability for payment. Until the work is done and the amount due determined thereby, there is no accurate way of determining the amount due.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 16, 1932.

Hon. J. K. Thompson,
County Solicitor,
Scottsboro, Alabama.

As to when any lien holder or mortgagee of real estate may pay the ratable part of the taxes assessed on said real estate and relieve such real estate from the lien for all of the taxes assessed against the taxpayer is governed by Act No. 578, approved October 1, 1923, (Acts 1923, pages 750, 751.)

Opinion by Assistant Attorney General Evans.

Dear Sir:

Receipt of your letter of March 15, 1932, acknowledged.

You make the following statement of facts:

"A farmer assesses his farm and some personal property and later his farm is sold under a pre-existing mortgage, and the farmer is left without real or personal property. The mortgagee became the purchaser at the foreclosure sale, such purchaser now offers to pay the taxes on the real estate; but refuses to pay that part of the taxes assessed against the taxpayer on personal property."

You wish my opinion as to whether or not the Tax Collector can force said purchaser and present holder of the real estate to pay the taxes assessed against said taxpayer on both real and personal property.

In reply will say that the proper answer to your inquiry is governed by Act No. 578, approved October 1st, 1923 (Acts 1923, pages 750, 751). Such purchaser could pay the ratable part of the taxes on the real estate purchased by him and relieve the lands purchased of the lien, if the person to whom such real estate was assessed, or for whose taxes said land is subject to a tax lien, has sufficient other real estate or personal property returned or assessed and subject to levy or sale out of which the remainder of the taxes may be collected by the Tax Collector.

To relieve the land, purchased at the mortgage foreclosure, from the lien for taxes, all the taxes assessed against the taxpayer must be paid, if there is not sufficient other real estate or personal property of the taxpayer returned or assessed and subject to levy and sale out of which the remainder of the taxes may be collected by the Tax Collector.

Under the facts stated by you, if the purchaser sees fit not to pay all the taxes assessed against the taxpayer, then the Tax Collector should proceed for an order of the Probate Court to sell the land for the payment of the taxes.

While the Tax Collector cannot force the purchaser to pay any part of such taxes, it becomes his duty to proceed for a sale of the land to pay all the taxes due by the taxpayer. The State and the County had a prior lien on this land for the payment of all the taxes due by the taxpayer and the foreclosure of the mortgage in no way affected such lien.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 16, 1932.

Hon. W. R. Harrison,
County Superintendent of Education,
Montgomery, Alabama.

1. County School Boards of the State of Alabama have no right or authority to sell issued State warrants nor to discount them.

2. County School Boards may borrow money for the purposes named in Act No. 232, approved June 4th, 1931 (Acts 1931, pages 279-280) and pledge as security therefor issued State warrants, within the limitations placed by said Act.

3. The County School Board may be sued for breach of contract.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Receipt of your letter of April 13th, 1932, acknowledged. You ask my opinion:

1. As to whether or not the County School Boards in Alabama have the right and authority to sell the warrants issued by the State Auditor against educational school funds in favor of the County Treasurers of School Funds at a discount?

2. In case of sale and non-payment of these warrants by the State at the end of a specified time, viz: eighteen months, would purchaser have the right to sue the County Board of Education or the State to force payment?

In answer to the first question will say that the authority of the County Board of Education in the premises, is regulated by Act No. 232, approved June 4th, 1931 (Acts 1931, pages 279, 280). In this Act I find no authority for the County Board of Education to sell "issued State warrants" at a discount, or otherwise. Said Act provides that the County Board of Education may borrow money for the purposes named in the Act and pledge as security therefor, issued State warrants. The amount so borrowed shall at no time exceed one-third of the sum paid out for current expenses during the preceding school year.

In the first place, no permission is given to sell such warrants, or discount them. It simply means to pledge them as security for the loan, so that the money, when received by the County Board of Education in payment of such warrants, shall be applied by it to the payment of such debt.

In answer to the second question will say that in my opinion the County Board of Education is a quasi corporation; it "is given the right to sue, and the implied right to be sued."—Kimmons v. Jefferson County School Board. The State, of course, could not be sued by reason of the constitutional provision to that effect.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 16, 1932.

Hon. P. B. Jarman, Jr.,
Secretary of State,
CAPITOL.

All taxes when due are payable in money only.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of March 25, 1932, in which you enclose letter from Clark Equipment Company, Buchanan, Michigan, which is as follows:

"We acknowledge your Form Letter of March 2, returning to us cashier's check from the First National Bank of Buchanan, No. 14328, dated January 27, 1931, to the amount of $10.00.

"I am sorry to advise that the First National Bank of Buchanan closed in the middle of October, and I am very much surprised to learn at this time that the State of Alabama had been holding this check.

"My information is that the recipient of a check is obligated to cash or deposit it promptly, and if they are negligent in this regard, any ensuing loss should be for the account of the recipient rather than the maker.

"As I see this situation, there is a matter of $10.00 tied up in a closed bank, which is either for the account of the State of Alabama or the Clark Equipment Company.

"The reason for this amount being tied up, is that a year ago there apparently was certain difference of opinion among Alabama State officials, which resulted in this check not being cashed. This being so, it would appear that the State of Alabama should reimburse the Clark Equipment Company in the amount of $10.00, and should place their claim with the First National Bank."

It is my opinion that the party referred to above is not entitled to reimbursement. Taxes of this character are presumed to be paid in money. In fact where taxes of any character are fixed at any amount, the amount fixed means lawful currency of the United States. Any officer receiving taxes or money for the State, can refuse to accept any offer of payment unless the offer is made in actual currency.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 16, 1932.

Hon. G. P. Butler,
Judge of Probate, Lee County,
Opelika, Alabama.

Party advertising sale as "clean out, close out, sell out" held liable for license provided for by Schedule 51, Acts 1919, Section 361.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of March 18, 1932, enclosing circular advertisement of A. B. Fleisher, a merchant of Opelika, who proposes to hold a sale which is advertised as "clean out, close out, sell out." You state that Mr. Fleisher is not holding a "close out" sale, but merely for the purpose of the reduction of the stock of merchandise on hand. There is nothing in the advertisement showing this to be a fact unless the words "of all surplus merchandise" appearing after the above quoted words can be held to import such meaning.

The question you present is one of considerable doubt, but from the form of the advertisement I am of the opinion that it comes within the terms of Schedule 51, Acts 1919, Section 361.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

May 21, 1932.

Hon. John Brandon,
State Auditor,
CAPITOL.

Registrars in publishing names which have been stricken from the qualified list should follow strictly, in making such publication, Section 393, Code of Alabama, 1923, as amended.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of April 30th, 1932, in which you request my opinion as follows:

"I have your opinion of April 29th, with reference to the payment of publication of notice of names proposed to be stricken from voters lists under Section 393, Code of 1923.

"Please advise whether or not the State should pay for the publication of names of voters proposed to be stricken from the lists reported as dead or non-residents of the State.

"I am attaching hereto a bill from the Jasper Advertiser, Walker County, for your observation and would thank you to return same to this office along with your opinion."

In going over the list of names published by the Board of Registrars of Walker County, on the 8th day of February, 1932, as provided by Section 393, Code of Alabama, 1923, and amended by an Act approved August 20, 1927, (General Acts 1927, p. 274), I find quite a number of names marked "dead" and quite a lot more marked "reported gone." I take this last expression to mean moved from the State. If this is true, then they are non-residents and the Section above referred to, viz: Section 393, as amended, plainly says that the list to be published shall not contain the names of these dead or who are non-residents of the State. This Section is as follows:

"Notice and hearing when names are to be stricken from list. When the name of any elector is proposed to be stricken from the registration list, unless he or she is dead or is a non-resident of the State, notice shall be issued to him or her by the board of registrars, citing him or her to appear before the board on the second Monday in February, following and show cause why his or her name should not be stricken from the list. Said notice shall be served by the sheriff at least five days before the second Monday in February. The board of registrars shall in addition to the above notice give notice in some newspaper published in the county by one insertion."

You will note from the above quoted section that in designating the kind of notice that must be given, it says among other things that notice shall be by personal service and by publication in some newspaper, etc. The reason for the exception there, notice cannot be had on a person dead. Likewise, service cannot be made on a non-resident of the state. Therefore, this list should not contain such names.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 4, 1932.

Hon. A. F. Harman,
State Superintendent of Education,
Montgomery, Alabama.

Act approved July 23, 1931 empowering county governing bodies to fix the amount of official bonds of all county officers, construed.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I beg to acknowledge receipt of your two letters of November 12th and November 17th, as follows:

"November 12, 1931.

"For your information I am handing to you herewith copy of a telegram of this date to Superintendent S. M. Tharp, Baldwin County Board of Education, Bay Minette, Alabama.

"In view of your opinion written to Honorable Ellis E. Moody, County Superintendent of Education, Ashville, Alabama, under date of October 6, it appears to me that it is not my function to approve the bond of a county treasurer of school funds.

"If I am in error in this judgment, I shall be obliged to you to have your official opinion setting forth clearly the functions and obligations of the State Superintendent of Education in this matter."

"November 17, 1931.

"Referring to your opinion under date of October 6, 1931, holding that Section 1 of Act No. 478, H. 183-Tate, approved July 23, 1931, withdraws from the State Superintendent of Education the right to supervise the making of the bond by the treasurer of school funds and places such duty or right on the board of revenue or court of county commissioners, I will thank you to advise me further on the following:

"1. Does Section 1 of the above mentioned act empower county boards of revenue with authority to disturb existing contracts by fixing and approving official bonds of treasurers of public school funds which were executed prior to the approval of said act and which have not expired.

"2. What is the duty of the county boards of revenue in the matter of filing of official bond of the treasurer of public school funds which has been fixed as to amount and approved by that body?

"3. In the absence of information on the part of the State Superintendent of Education as to the form and sufficiency of the bond of the county treasurer of public school funds, what is his responsibility in determining the amount for which he shall approve the requisition of said officer for moneys to meet the monthly pay rolls or for other purposes."

In answer to your inquiry, I beg to refer you to Section 147, 298 and 587 of the School Code of Alabama, 1927.

Section 147 provides that the county superintendent of education before assuming any of his duties must give bond in an amount to be fixed by the State Board of Education and that the bond must be furnished by a reputable surety company authorized to do business in Alabama. The section provides further that the bond shall be filed and recorded in the office of the Judge of Probate and a certified copy of the bond filed in the office of the State Superintendent of Education for his approval. This section, in effect, provides that the amount of the bond of the county superintendent of education is fixed by the State Board of Education and approved by the State Superintendent of Education. What effect does the Act of 1931 have on this section? It cannot be denied that the county superintendent of education is such a county officer as is mentioned in the Act of 1931. The Act of 1931, in my judgment, repeals Section 147 insofar as Section 147 is in conflict with the provisions of the 1931 Act. The authority to fix the amount of the bond is no longer in the Board of Education but is in the county governing body. Both the 1931 Act and Section 147 provide that the bond must be made by a reputable surety company authorized to do business in Alabama, so there is no change in this regard. The 1931 Act does not repeal the part of Section 147 which provides that the bond must be filed and recorded in the office of the Judge of Probate of the County, neither does the new law repeal the part of Section 147 which provides that a certified copy of the bond must also be filed in the office of the State Superintendent of Education for approval. However, as I view the new law, the act of the Superintendent of Education in filing the bond is merely perfunctory. In view of the provisions of the new law, I do not understand that the Superintendent of Education would have any authority at all in the matter of fixing the amount of the bond.

In this connection, I beg to refer you to Section 1 of the Act of 1931. This section provides that the county governing body is empowered with the exclusive authority to fix the amount of the official bond of all county officers. I beg to call your attention to the following words used: **Exclusive, fixed** and **amount.** The word "exclusive," in its usual and generally accepted sense, means possessed to the exclusion of others, appertaining to the subject along, individual, sole; for example to confer exclusive jurisdiction on one court deprives all other courts of such jurisdiction.—Commonwealth vs. Superintendent of House of Correction, 64 Pa. Super, Ct. 613, 615. The word "fix" means to make fast, firm, or immovable, a law which permits a city to make gas rates, for example, clothes the city with the power to fix the rates without ascertaining the reasonable price of gas, and without interference by other persons or tribunals.—Logansport and West Virginia Gas Co., vs. City of Peru, 89 Fed. 185, 197. Webster defines the word "fixed" to mean "to settle or remain permanently." Huck vs. Gaylord, 50 Texas, 578, 582. The words fix, exclusive, and amount make a very strong combination. The word "fix" conveys the idea of finality. The wisdom of the 1931 Act is not

for this office to pass upon. We can only construe the law as it is written. While the Act does not relieve the county superintendent of education of the duty of filing his bond with the State Superintendent of Education, as provided by Section 147, it does in effect, render the act of approving merely perfunctory; in other words, as I construe the 1931 Act, in the event the State Superintendent of Education should be of the opinion that the bond fixed by the county governing body was not of a sufficient amount, the State Superintendent of Education would be powerless to increase the bond. The 1931 Act, however, does not destroy the right of the county governing body to increase the amount of the bond under the provisions of Article VIII of Vol. 1 of the Political Code of Alabama, 1923.

In a conversation between the writer and your Mr. Gunnels, Mr. Gunnels requested that this office advise you what effect the Act of 1931 has on Section 298 of the School Code of Alabama, 1927. Section 298 provides that the treasurer of school funds shall give a surety bond in such sum as is prescribed by the State Superintendent of Education and that such bond shall be approved by the State Superintendent of Education. Section 587 of the School Code of 1927 provides that this bond shall be filed in the office of the State Department of Education in Montgomery, unless otherwise instructed by the State Board of Education. The Act of 1931 repeals Section 298 so far as the fixing of the amount of the bond is concerned. As I construe the 1931 Act, the State Superintendent of Education no longer has the right to prescribe the bond of the county treasurer of school funds as provided by Section 298, for the several reasons set out hereinabove. The new law does not relieve the county treasurer of school funds of the legal duty of filing his bond in the office of the State Department of Education in Montgomery, neither does the new law change any other part of provision of Section 298.

You inquire whether the Act of 1931 authorizes the county governing body to disturb bonds which were fixed and approved prior to the approval of said Act. (This office has repeatedly held that a treasurer of school funds is a county office.) If the treasurer of school funds qualified, made his bond and entered upon the discharge of his duties prior to the date of the approval of the 1931 Act, I am of the opinion that the county governing body, under the 1931 Act would be without authority in law to disturb the contract in any way. Since the treasurer of school funds is a county officer, the county governing body, acting under Article VIII of Vol. 1 of the Political Code of 1923 could, when the conditions warranted it, increase the amount of the official bond of the county treasurer of school funds. Let us suppose the treasurer qualified and made bond for a term of four years, before the approval of the 1931 Act and let us suppose further that after the approval of the Act the county governing body attempts to reduce the bond. Under these circumstances, I think the making of the bond would be governed by the law as it existed at the time the bond was made. I do not think the 1931 Act could in any way impair or disturb the obligations of the contract made be-

tween the surety company and the county treasurer before the approval of the 1931 Act.

You inquire about the duty of the governing body in the matter of the filing of the bond of the treasurer of school funds. In answer to your inquiry I beg to advise that, in my judgment, in any event, the duty still rests upon the treasurer of school funds to file his bond with the State Department of Education, as provided by Section 587 of the School Code. In my judgment, this duty devolves upon the treasurer of school funds and not upon the county governing body.

I repeat here your next question:

> "In the absence of information on the part of the State Superintendent of Education as to the form and sufficiency of the bond of the county treasurer of public school funds, what is his responsibility in determining the amount for which he shall approve the requisition of said officer for moneys to meet the monthly pay rolls or for other purposes?"

In my judgment, before the State Superintendent of Education approves a requisition of a county treasurer of school funds for money, and before the State Superintendent of Education sends the money to the treasurer of school funds, the State Superintendent of Education must be reasonably satisfied that the county treasurer of school funds and the county superintendent of education have made such bonds as may have been prescribed by the county governing body. The State Superintendent of Education would not be interested in the amount of the bonds, as this duty devolves upon the county governing body, but, in my judgment, the State Superintendent of Education would be charged with the exercise of reasonable diligence, in ascertaining whether the county treasurer of school funds and the county superintendent of education have made bonds as required by law, before honoring the requisition of the county treasurer of school funds, and before dispatching the money called for by the requisition of the county treasurer of school funds. The State Superintendent of Education would not, of course, want to send any amount of money to a county treasurer of school funds, on requisition without having reasonably satisfied himself that both the superintendent and treasurer had made bonds in the manner provided by law. I would suggest here that the Superintendent of Education require each county superintendent of education and each county treasurer of school funds to attach to his official bond filed in the State Department of Education, a certified copy of the resolution, order or minutes of the county governing body fixing the amount of the official bond of each officer. I would suggest further that the Superintendent of Education, in addition to this, make such other and further investigation as he deems expedient in order to reasonably convince himself that the bonds mentioned in the order or minutes had been executed by such a surety company as is qualified to make such bond. As indicated hereinabove, the State Superintendent of Education, in dispatching moneys to a county treasurer of school funds,

on the requisition of the county treasurer of school funds would not be interested in the amount of the bond of either. If the amount of money which the requisition calls for exceeds the bond of either the county superintendent of education or the county treasurer of school funds, the State Superintendent of Education would not subject himself to any sort of liability by dispatching this money to the county treasurer of school funds, even with full knowledge that the amount being sent exceeded the amount of the bond of the county superintendent of education or exceeded the amount of the bond of the county treasurer of school funds. This is not the responsibility of the State Superintendent of Education, but the responsibility of the county governing body. I do not in this opinion pass upon the question of the liability, if any, of the official bonds of the individuals composing the county governing body, for any loss which may be occasioned by a failure on the part of the county governing body to fix the bond of either the county superintendent of education or the county treasurer of school funds sufficiently high as to insure the safety of public moneys coming into the hands of either.

Mr. Gunnels inquires whether, under the 1931, Act a county governing body must fix the bond of a county treasurer of school funds or a county superintendent of education each year. In answer I beg to advise you that in my judgment the 1931 Act does not require the county governing body to fix the bond each year. If, for example, a county superintendent of education qualified, made his bond for a period of four years and filed the same with the State Auditor, and did all of this before the approval of the 1931 Act, then and under these circumstances the county governing body, under the 1931 Act, would be powerless to reduce the amount of the bond in any way during the four year period. The bond could be increased under Article VIII of the Political Code of Alabama of 1923. On the other hand, under the 1931 Act, if the officer had not qualified before the approval of the 1931 Act, the county governing body would be authorized to fix the bond of a county superintendent of education or a county treasurer of school funds yearly, that is, the bond contract, from year to year. Of course, we must constantly keep in mind that under Article VIII of the Political Code of 1923, the county governing body has authority to increase the bond under certain conditions.

You next inquire about the right of a county governing body under the following set of facts: A county superintendent of education was elected at the General Election in 1930 after the date of the approval of the 1931 Act, believing he had until September 1st in which to qualify and file his bond with the State Auditor, the officer made bond for a period of four years and filed the same with the State Auditor. He enters upon the discharge of his duties under the bond on October 1st. During the month of October the county governing body fixes his bond at a different amount from the amount of the bond he had already made. Under this set of facts, did the county governing body act lawfully in fixing the bond? Under the above state of facts, what was the liability,

if any of the first bond for any irregularity on the part of the officer committed during the time the first bond was in force?

In answer to your inquiry, I beg to advise that, in my judgment, the county governing body had ample authority under the 1931 Act to fix the amount of the bond in the manner stated above. The bond was made and filed with the State Auditor after the approval of the 1931 Act. The officer would, therefore, be bound to follow the provisions of the 1931 Act and not the provisions of Section 3046 of the Political Code of 1923. The officer had a certain period within which he might make and file a bond, viz: between the date on which his election became finally determined and the following September 1st. If the officer had qualified, made his bond and filed the same with the State Auditor before the approval of the 1931 Act, he would have been governed by the law as it stood at that time (Section 3046 of the Political Code of 1923) and not the 1931 Act. However, he did not do this, but waited until after the approval of the 1931 Act before he qualified, made bond and filed the same with the State Auditor, and he was, therefore, governed by the 1931 Act.

In the event there had been a misappropriation of funds by the officer during the time the first bond was in force, the first bond, of course, would have been liable. There is ample authority, both statutory and in the decisions in support of this. After the making of the second bond (the bond dictated by the county governing body) the liability on the first bond ceased. I am aware of the fact that, generally speaking, a bond can be relieved only in two ways: By resignation of the officer, and by a petition to the court on the part of the surety company. But these statutes were never intended to operate in a situation of this kind. Under such circumstances, I am of the opinion, that the courts would never hold that there would be any liability on the first bond for any irregularities or misappropriations of moneys which took place after the making and filing of the second bond.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 7, 1932.

Hon. A. F. Harman,
State Superintendent of Education,
CAPITOL.

Schools—Contract for erection of school building—payment of amount of State Aid in final settlement to surety company which completed work of the original contractor where there were outstanding claims for labor and materials furnished the original contractor.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of May 9, 1932 together with an inquiry from C. W. Johnson, County Superintendent of Education of Houston County, and also copy of a contract for the construction of a school building and the bond of the surety company in connection therewith.

The following facts are stated: "Gaines-Davis & Company, Inc., contracted to build Madrid school building for $7,150.00 and were bonded by the Consolidated Indemnity and Insurance Company for the amount of the contract. Gaines-Davis Company defaulted on the contract leaving bills filed with the County Board of Education for labor and materials approximating $4,500.00 unpaid. Gaines-Davis Company was paid by the County Board of Education about $4,700.00, the amount of local aid. The bonding company had to take over and complete the building at a cost of approximately $2,500.00. The Bonding Company is demanding the amount of State Aid still due on the Gaines-Davis contract and is not making any arrangements to take care of these bills."

You request an opinion of this office on the following:

"1. Shall the Board of Education refuse to pay over the amount of State Aid to the Bonding Company as demanded until all claims for labor and material have been disposed of?

"2. Is the County Board of Education legally or otherwise obligated to protect these claims for labor and material furnished to Gaines-Davis Company?

"3. Just what course should the County Board of Education take in dealing with the Bonding Company with reference to the amount of State Aid and these claims?

"4. If State Aid warrants are not paid by State Treasurer, is the County Board required to pay in money from other sources?"

I am of the opinion that your first inquiry should be answered in the negative. By the terms of the contract in question the contractor was to furnish and pay for all labor and materials. The County Board of Education was not and is not now under any obligation or liability to pay for the labor and material furnished the original contractor. A lien is not created on public building contracts.

Although a suit may be brought in the name of the County Board of Education for the benefit of material men against the surety company for the materials furnished the original contractor, the County Board of Education in such instances is only a nominal plaintiff and not a party at interest.—**Jefferson County Board of Education vs. Union Indemnity Company,** 218 Ala. 632.

If suit were brought against the County Board of Education by the surety company for the bills due—all conditions of the original contract having been fulfilled—the County Board of Education could not set up as defense that the material men, who furnished the material to the original contractor, had not been paid, thereby relieving itself of the liability of paying the surety company until this condition had been fulfilled.

In answer to your second and third inquiries, I am of the opinion that the County Board of Education is not legally or otherwise bound to protect the claims of the original contractor other than as has already been done by the conditions of the bond.

Under the conditions of the said bond, suit may be brought in the name of the County Board of Education for the benefit of the material men against the surety company for the amount owed the material men by the original contractor.—Jefferson County Board of Education vs. Union Indemnity Company, supra. It is not up to the County Board of Education to take any further steps to protect the claims of the material men unless possibly the Board would consider it a matter of policy to defer payment to the surety company until the claims of the material men have been settled. But the deferring of said payments would not render the County Board of Education any the less liable if suit were brought against it by the surety company.

As a matter of precaution, if the Board is in doubt as to what parties are legally entitled to any money in their possession, it may hold the money until the rights are determined under Section 10290, Code of Alabama, 1923. Opinions Attorney General, 1928-30, page 512.

In answer to your fourth inquiry, the County Board of Education would be required to pay money due from other legal sources if the State warrants which were given as State Aid cannot be paid by the State Treasurer.

Section 6 of the contract between the County Board of Education and the original contractor provides as follows:

> "6. That the party of the first part agrees to pay to the party of the second part 80% of the work completed and material laid on grounds every two weeks, or as often as the state or work may make it necessary. But it is understood and agreed with the party of the second part that $2,383.34, the amount of State aid, shall not be paid until the building has been completed, approved and accepted by the State Department of Education. It is further agreed that published notice shall be given 30 days before final settlement."

The conditions upon the payment of the final amount due is the completion of the building, the approval and acceptance by the County Board of Education and the publication of notice of the final settlement.

It is not a condition for final settlement that the amount of State Aid be actually paid to the County Board of Education. "The amount of State Aid" as set out in the above quoted section is merely descriptive of the final amount to be paid and its payment by the State is not a condition precedent to the making of the final payment. Since the surety company is subrogated to the rights of the original contractor and stands in his shoes, said Section 6, above quoted, is applicable to the claims of the surety company.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 7, 1932.

Hon. J. A. Lee,
County Superintendent of Education,
Selma, Dallas County, Alabama.

Proceeds of insurance from school buildings may be used to match State funds available for building purposes.

Opinion by the Attorney General.

Dear Sir:

I have your letter of recent date in which you inquire whether or not the proceeds of insurance on a burnt school building may be used to match State aid. I understand the question presented to me that the County contributed certain funds for building the school house which funds were matched, according to law, by the State. I also understand that the building was insured, the County paying the premium on the insurance.

You desire to know whether or not the funds derived by the County as its share of the insurance may be used to match State funds available for building purposes.

I am of the opinion that the funds so accruing to the County may be used for this purpose.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 7, 1932.

Hon. Harry K. Martin,
Judge of Probate,
Dothan, Houston County, Alabama.

Commissioners Courts, Boards of Revenue or other governing bodies of the various counties of the State may carry on the work of farm demonstration agent independently of the Federal Government.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of May 10, 1932, in which you request my opinion as to whether or not the various counties of the State, through their Commissioners Courts, Boards of Revenue or other governing bodies, are authorized to carry on the work of farm demonstration agent independently of the Federal Government. In other words, whether or not they can carry it on where the Federal appropriation has been withdrawn.

It is my opinion the various counties of the State may, through their commissioners courts, boards of revenue or other governing bodies, if they see fit, carry on the work of farm demonstration agent independently of the Federal Government, and where the Federal appropriation for any reason has been withdrawn from any county it may independently carry on said work. I call your attention to Section 6755, Code of Alabama, 1923, and particularly to subsection 23 of said section, which is as follows:

"23. To set aside, appropriate and use county funds or revenue for the purpose of **developing,** advertising, and promoting the agricultural, mineral, timber, water, labor, and all other resources of every kind of their respective counties, and for the purpose of locating and promoting agricultural, industrial, and manufacturing plants, factories and other industries in their respective counties."

I think there is no doubt that the work of the farm demonstration agent of any county would be included in the following expression of the above quoted section:

"To set aside, appropriate and use county funds or revenue for the purpose of **developing,** advertising, **and promoting** the agricultural, mineral, timber, water, labor and all other resources. * * *"

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 9, 1932.

Hon. J. B. Graham,
Member, Commissioners Court,
Atmore, Alabama.

Under the Gasoline Act of 1923, and the Amendment of 1931, Acts 1931, page 458, County Commissioners cannot transfer funds received from gasoline tax to regular road and bridge fund for the payment of claims charged and payable out of such road and bridge fund.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of May 23rd in which you inquire:

"Please advise me if money out of the gas tax can be transferred to the road and bridge fund to take up warrants issued on the roads and bridges to pay for road machinery."

In reply I beg to advise that Act No. 387, approved July 15, 1931, amending the Gasoline Act of 1923, provides in part as follows:

"Provided, however, that all the funds derived by the several counties from said tax shall be expended exclusively for the maintenance, or construction or repair of roads or highways or bridges in said county. The use or expenditure of any of said funds in any other manner or for any other purpose than as provided herein, by the governing body of any county or any individual member of said body shall constitute a misdemeanor punishable by a fine of not less than one hundred dollars nor more than one thousand dollars, and by imprisonment in the county jail at hard labor for the county for not less than one nor more than twelve months."

You will therefore see that the use of these funds for any other purpose than therein specified is unlawful. It is my opinion that you cannot transfer gasoline funds to the regular road and bridge fund for the payment of claims charged to such road and bridge fund.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 9, 1932.

Hon. G. H. Howard,
Judge of Probate,
Wetumpka, Elmore County, Ala.

The second Democratic Primary to be held June 14th must be held at the same place in each precinct, and by the same officers who held the May 3rd Primary.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of May 6, 1932, in which you request my opinion as follows:

"Please advise us if the election officers named for the Primary of May 3rd are to serve in the second Primary to be held June 14th, or will it be necessary for the Executive Committee to appoint new officers."

The same officers who held the Democratic Primary on May 3rd are required to hold the second primary on June 14th.

I call your attention to Section 5 of an Act approved February 25, 1931 (General Acts 1931, p. 73). This section reads in part as follows:

" * * * The second primary election shall be held by the same election officers, who held the first primary election, and be held at the same places the first primary election was held. * * * "

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 9, 1932.

Hon. W. H. Cantrell,
Judge of Probate,
Hamilton, Marion County, Alabama.

Returning officer of any election should deliver the returns of his precinct within a reasonable length of time after the box has been delivered to him.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of May 6, 1932, in which you state there has arisen some confusion in your county as to how long the returning officer has

to deliver the returns from any precinct to those designated to receive them, and request that I give you an opinion as to this point.

Primary elections are held under the law governing general elections unless otherwise provided. Section 456, Code of Alabama, 1923, states what shall be placed in the ballot box when the votes have been counted and duly certified in the precinct. I find no fixed directions as to how soon the returning officer shall deliver the returns to the constituted authorities, but he should do so in a reasonable length of time. There should be no unnecessary delay, but the law does not specify the hour nor the day.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 9, 1932.

Hon. G. L. Malone,
Judge of Probate, DeKalb County,
Fort Payne, Alabama.

1st. There is no express provision in the law for compensation of a Probate Judge for issuing a County warrant for the payment of money.

2nd. Compensation to an extent, of a Probate Judge for issuing a County warrant for the payment of money, as well as for the discharge of other duties for the compensation of which no express provision is made by law, is provided for by Section 7285 of the 1923 Code.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of February 15th, 1932, was duly received.

You request my opinion as to whether or not the law allows you anything for writing the County warrants required of you by law.

I presume that you mean County warrants for the payment of money, as provided by Section 224 of the 1923 Code of Alabama.

In reply will say that, in my opinion, there is no express provision made by law for the compensation of the discharge of said duty. Compensation for the discharge of this duty falls under the following subdivision of Section 7285 of the 1923 Code of Alabama:

"All other official duties, for the compensation of which no express provision is made by law, such sum as may be allowed by the Court of County Commissioners to be paid out of the County Treasury, not exceeding per annum—$400.00."

As said in re Mobile County v. Williams, 180 Ala. 639, headnote 2:

" * * *, an officer claiming fees must point to a definite law authorizing them, and such law cannot be extended beyond its letter, as the state may impose duties on public officers without providing compensation therefor."

There is no definite law authorizing the payment of compensation for issuing a county's warrants by a Judge of Probate; but compensation for the discharge of such duty is taken care of, to some extent, by the subdivision of Section 7285 already quoted.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 10, 1932.

State Tax Commission,
CAPITOL.

Attention: Mr. J. R. Gamble

Public utility paying license as such, not liable for license as coke dealer for selling coke, created as by-product in its manufacture of gas.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"The Huntsville Gas Company pays a public utilities license under Schedule 89, Section 361, page 282 of Acts 1919.

"In making a statement of gross receipts upon which the license paid was based it included in the gross receipts the receipts from the sale of coke which is naturally a by-product in the process of manufacturing gas.

"Schedule 29, Section 361, page 282, Acts 1919, provides as follows:

"COAL OR COKE AGENTS OR DEALERS.

" 'Each person dealing in coal or coke in towns or cities of five thousand inhabitants or less, five dollars; in cities of more than five thousand and not more than twenty thousand inhabitants, ten dollars; in cities of more than twenty thousand inhabitants, twenty-five dollars; but this shall not apply to persons who sell in quantities of less than one ton, or to persons who mine their own coal and sell the same in wagon lots only.'

"Please advise this Commission whether, in your opinion, the Huntsville Gas Company is liable for license as Coke Dealers, under Schedule 29, supra."

In reply I beg to advise that if the sale of coke is limited to such coke as is manufactured as a by-product to the manufacture of gas, the company is not liable for the license. Such sales being merely incidental and subsidiary to the main business, otherwise licensed, would not constitute the company a dealer in coke, within the strict meaning of that term, in my opinion. Tax statutes are to be strictly construed against the State, and so construing the Act, under the facts, I am of the opinion that there is no liability for the coke license for the sale of coke, made as a by-product by the company in the manufacture of gas.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 10, 1932.

Hon. G. P. Butler,
Judge of Probate, Lee County,
Opelika, Alabama.

1. Under facts set out two construction companies operating lumber yards held liable for the license on same.

2. Under facts set out two mercantile firms keeping certain lumber in their warehouses held not liable for the license for operating a lumber yard.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of April 29th in which you state:

"Here in Opelika we have two construction companies who maintain a lumber yard where they keep for sale in large and small quan-

tities lumber of various sorts. They take out the 'lumber yard' license each year under the above stated schedule.

"There is in addition one or two mercantile firms in the City of Opelika who buy and sell lumber as part of their stock in trade and as a part of their business. They do not maintain what is known and called a lumber yard but they keep the lumber, such as ceiling, flooring, weather boarding, shingles, etc., in their warehouses adjacent to their places of business and sell and deliver from such store and warehouse, thereby offering competition to the firms who have taken out the license on such a business.

"I desire your opinion as to whether such a mercantile establishment or a builder and contractor who deals in lumber or who keeps it for sale as stated in the foregoing paragraph can be called a lumber dealer and can be cited to take out a license for a lumber yard."

In reply I beg to advise that under the facts stated by you, the two construction companies are operating lumber yards and therefore they are liable for the license on same. Under the facts set out by you as to the mercantile firm, it is my opinion that they are not liable for the license provided for lumber yards. The license is not on dealers in lumber, but on persons operating a lumber yard and under the facts stated by you, the manner in which the lumber is handled does not, in my opinion, constitute operating a lumber yard. Under the rule of strict construction it is my opinion that the two mercantile firms which you describe are not liable for the license on persons operating a lumber yard.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 10, 1932.

Hon. A. D. Childs,
Tax Collector, Geneva County,
Geneva, Alabama.

Truck on which ad valorem taxes have been paid is subject to levy for collection of other taxes due by the owner.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of April 30, 1932, in which you state:

"Under the laws of Alabama I wish to state a case to you for your guidance.

"The Mutual Grocery Co., a corporation doing business in Geneva County, has liquidated, leaving 1931 taxes unpaid. This occurred before my term of office began.

"In the personal property of said Mutual Grocery Co., listed to me for sale for said taxes, is a motor truck on which taxes were paid at the time the license tag was purchased. Does the fact that taxes have been paid on this truck exempt the truck from sale along with the other personal property of this corporation?

"The fact is, this truck has not been sold away from the other property; neither did Mutual Grocery Co. tag the truck. It was left in the care of some party who tagged it for his own use. This person has refused to turn the truck over to me for sale."

In reply thereto I beg to advise that no property is exempt from levy for the collection of taxes due even though the taxes on such particular property have been paid. Therefore if the truck which you describe is the property of the Mutual Grocery Company you are authorized to levy on the same for taxes due by such Company, in my opinion.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 10, 1932.

Hon. W. J. G. Gunter,
Tax Collector, Dale County,
Ozark, Alabama.

1st. A mortgagee of personal property may pay the entire tax due by the taxpayer, which constitutes a lien on such mortgaged property, and thereby be subrogated to the liens of the State and County. The money so paid may be collected as part of the mortgage debt.—Section 411, Act No. 328, approved September 10th, 1919. (Acts 1919, page 448).

2nd. A mortgagee of personal property may not pay a proportional or ratable part of the taxes constituting a lien on such mortgaged property and thereby release such mortgaged property from the State and County lien for the balance of the tax due by the taxpayer.

3rd. The payment of a ratable or proportionate part of the tax by a lien holder and thereby releasing part of the property assessed from the State and County tax lien, applies to real estate only, under conditions named in the statute.—Act No. 578, approved October 1st, 1923 (Acts 1923, pages 750-751).

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of April 21st, 1932, was duly received. You write as follows:

> "A person returns both personal and real property for tax assessment. During the same tax assessment year he executes a mortgage on the personal property to "A." This mortgage is unpaid when the taxes become due. May "A," the mortgagee of the personal property, pay the taxes upon the personal property upon which he has a mortgage, and thereby release such personal property from the lien for all the taxes due by the taxpayer?

In reply will say that by Section 416 of Act No. 328, approved September 15th, 1919 (Acts 1919, page 448) it is provided:

> "From and after the first day of October of each year, when property becomes assessable, the State shall have a lien upon each and every piece or parcel of property owned by any taxpayer for the payment of all taxes which may be assessed against him. * * * and the County shall have a like lien thereon for the payment of the taxes which may be assessed by it; * * *. These liens shall be superior to all other liens and shall exist in the order named and each of such liens may be enforced and foreclosed by sale for taxes as provided by this Act, or as other liens on property is enforced."

Section 411 of said 1919 Revenue Act reads as follows:

> "The holder of any lien on real or personal property may pay the tax thereon with interest and penalties and upon such payment shall be subrogated to the lien of the State, County or municipality and the sum so paid shall bear legal interest from the date of payment and may be collected in the same manner as the original claim of the lien holder."

In considering the provisions of these two sections of the 1919 Revenue Act, it is my opinion that it was the legislative intent in Section 411 to permit a lien holder, such as a mortgagee, to pay all the taxes due by the taxpayer, which constituted a lien on the mortgaged property, and to subrogate to such mortgages, when such payment is so made, the lien of the State and County, and thereby makes such payment part of the mortgage debt, for the payment of which such moragage might be foreclosed in addition to the original debt secured by such mortgage.

In other words, the tax referred to is the tax which constitutes a lien on such mortgaged property and not just the tax on such mortgaged property.

The only case now provided by statute where a proportionate or ratable part of the taxes due by a taxpayer may be paid and thereby release part of the assessed property from the State and County lien, applies to real estate and not to personal property.—Act No. 578, approved October 1st, 1923 (Acts 1923, pages 750-751). In my opinion, this Act did not repeal or affect, in any way, said Section 411 of the 1919 Revenue Act.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 10, 1932.

Hon. John Brandon,
State Auditor,
CAPITOL.

1. Under former opinion of this office admission fees of foreign corporations are collected under Acts, Special Session, 1907, page 200.

2. In same opinion Section 7214, 7215, and 7216, of the Code of 1923, held impliedly repealed by the Franchise Tax Act of 1923.

3. Capital employed or to be employed as used in said statute discussed.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of October 27, 1931, in which you ask the following questions:

"Does a foreign corporation have to pay an entrance fee on the following amounts:

"1. Monthly expenses of Alabama Agency or Branch, including salaries, rents, insurance and operating expenses.

"2. Book value of property, both tangible and intangible, in Alabama not assessed for taxation in Alabama and not included in answering questions 7 to 13, on attached form.

"3. Loans secured by mortgage on real estate in Alabama on which the recording privilege tax has been paid and included in amounts under questions 14 and 15 on attached forms.

I find also attached to the file memorandum brief of Hon. S. F. Hobbs, in support of the proposition that the items set out by you are not to be

considered in determining the charter fee of foreign corporations qualifying to do business within the State of Alabama. He refers to Code Sections 7214, and 7215, Code of 1923, and also calls attention to Section 232 of the Constitution.

Section 232 of the Constitution provides for a franchise tax and this tax is provided for by the Franchise Tax Act of 1927 as amended by the Legislature of 1931. The Act of 1927 was merely a re-write of the Franchise Tax of 1923 and it in turn was the same Act previously passed on in the case of L. & N. vs. State, 78 So. page 93, which was held to be the tax provided for by Section 232 of the Constitution. To the same effect is the recent case of Penn Mutual Life Insurance Company vs. State, 135 So. 346.

In an opinion rendered to Hon. Brooks Smith, Member of the State Tax Commission, under date of September 29, 1924, this office held that Sections 7214, 7215, and 7216 of the Code of 1923, were repealed by implication by Sections 11, 11½ and 12 of Act No. 172, Acts 1923, page 152, approved August 22nd, 1923, this being the Franchise Tax Act of 1923. Subsequent to that the Franchise Tax Act of 1927 was passed clearly indicating to my mind that the Legislature recognized this ruling and reenacted with amendments the Act of 1923, as the constitutional franchise tax.

In the opinion above referred to it was held that neither the admission fee provided for by Section 7214 of the Code of 1923, nor said Act No. 172 did not repeal Act No. 92, Acts 1907, Special Session, page 200, requiring foreign corporations to pay an admission fee. Therefore, your authority for the collection of this admission fee is referable to said Acts of 1907, Special Session, page 200, rather than to Section 7214 of the Code of 1923. This Act provides for the payment of an admission fee on the capital employed or to be employed.

Coming now to your particular question, the only definition of capital employed I have found is that in State vs. Burchfield Bros., 211 Ala. page 30, in which it was said: "These words 'capital actually employed' were used in Subsection D, Section 5 of the statute in their natural and ordinary signification and in the general accepted sense. They have application to all properties and moneys set apart from other uses and invested or employed in the operation of the business with a view to income or profit therefrom."

Attention is called in this case to the case of State vs. Seals Piano Co., 209 Ala. 93, in which solvent credits were held to be a part of the capital employed and taxable as such.

These citations seem sufficient authority for including as capital employed or to be employed such sums expended as necessary operating expenses. I do not know what property is referred to in question 2. However, if there is such property not included in the other questions of your return then such property should be included.

In answer to question 3 it is my opinion that such mortgages should be included. The Act makes no exception therefrom and the recent decision of the Supreme Court in the case of Penn Mutual Life Insurance Company vs. State, allowed the exception of such mortgages by virtue of the legislative statute expressly excepting them from the Franchise Tax Act. There is no exception to be found in the Act of 1907, Special Session, above referred to.

Mr. Hobbs refers specifically to the capital stock in foreign corporations owned by the Uniontown Cotton Oil Company. The actual physical situs of this property in my opinion determines its taxability. If it is located in Alabama it is capital employed in Alabama. If it is located outside the State I do not think so.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 13, 1932.

Hon. Alex Brantley,
Judge of Probate, Pike County,
Troy, Alabama.

1. Person disabled to perform manual labor holding certificate from County Health Officer, exempt from peddler's license.

2. The fact that such peddler uses someone to drive for him does not deprive him of the exemption.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of April 30th in which you ask the following questions:

"1. Is a person who is disabled to perform manual labor, who holds a certificate from the County Board of Health, entitled to license exemption if he chooses to operate a rolling store? This rolling store, as I understand it, classifies the operator thereof as a peddler of merchandise traveling in a vehicle."

"2. Would this person be entitled to employ some one to drive his truck without affecting the right of license exemption, if the driver is accompanied at all times by the person holding the exemption certificate, provided said person transacts all matters of business?"

In reply to question 1 I advise that the law provides that the certificate of disability shall be from the County Health Officer. You state the certificate is from the County Board of Health. If the certificate is properly issued by the proper officer, in my opinion this party is exempt from the peddler's license.

In answer to your second question, I am of the opinion that the mere taking along of someone to drive would not deprive the party of the exemption to which he is otherwise entitled. Of course the exemption is purely personal and the driver cannot directly or indirectly peddle without taking out a license himself.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 13, 1932.

Hon. John B. Weaver,
Judge of Probate,
Double Springs, Alabama.

Gasoline fund which goes to each county of the State cannot be used for any other purposes than those provided by law.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of February 11, 1932 in which you request my opinion as follows:

"Can the Members of the Commissioners Court of this County who have in charge the construction and maintenance of the public roads have their compensation and traveling expenses paid from the gasoline fund which the county receives monthly?"

My answer to your inquiry is in the negative. I call your attention to Section 9 of an Act approved August 27, 1927 (General Acts 1927, p. 328) which section amends Section 8 of an Act approved February 10, 1923. Section 9, supra, reads as follows:

"Section 9. That Section 8 of the above mentioned act, approved Feb. 10, 1923, shall be made to read as follows: The proceeds of the excise tax prescribed in this act shall when collected, be paid into the State Treasury, and placed to the credit of the sixty-seven counties of the State, and shall be divided and distributed equally among the sixty-seven counties of this State and paid to each of the several counties as provided by law. Provided however, that all the funds

derived by the several counties from said tax shall be expended exclusively for maintenance and repair of roads, highways and bridges in said county. The use or expenditure of any of said funds in any other manner or for any other purpose than as provided herein, by the governing body of the county or any individual member of said body shall constitute a misdemeanor punishable by a fine of not less than one hundred dollars nor more than one thousand dollars, and by imprisonment in the county jail at hard labor for the county for not less than one nor more than twelve months. The State Highway Commission, shall have the authority to inspect the work upon which such funds are expended, and if in the judgment of the State Highway Commission, it appears that such funds are not being expended profitably or correctly, the State Highway Commission, shall report the matter to the Chief Examiner of Public Accounts. The Chief Examiner of Public Accounts is hereby especially charged with the duty of examining into and determining each year whether or not said funds have been used or expended as herein provided. Whenever said examiner of Public Accounts discovers a violation of any provisions of this section he shall forthwith report same to the Attorney General whose duty it shall be to direct the prosecution of said offense."

You can see from the above quoted section that to use this fund for any other purpose than for the exclusive use of maintaining and repairing roads, highways and bridges constitutes a misdemeanor.

Biennial Report Attorney General, 1928-30, pp. 857 and 675.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 13, 1932.

Hon. John H. Frye, Member,
Jury Board of Jefferson County,
Roebuck Springs,
Birmingham, Alabama.

Qualifications of jurors in the State of Alabama is provided for by Act No. 47, approved February 20, 1931 (Acts 1931, pages 55 et seq.)

The provisions as to qualifications of jurors in Act No. 47, approved Februray 20, 1931, are not repealed as to Jefferson County by Act No. 386, approved July 22, 1931 (Acts 1931, page 455).

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of May 30, 1932 to hand. You ask my opinion as to qualifications for jurors in Jefferson County.

In reply will say that the qualifications for jurors in all counties of the State, unless, in some county or counties, otherwise provided by law, is found in Act No. 47, approved February 20, 1931 (Acts 1931, page 55 et seq). This is a general Act for the State of Alabama and applies in every county in Alabama, where not otherwise provided by law.

On July 15, 1932 subsequent to the passage of the Act already mentioned, Act No. 386 (Acts 1931, page 455) was approved. This Act applies to counties having a population of three hundred thousand or more. This Act does not have the effect of repealing anything in said Act No. 47, that is not in conflict with what is said in said Act No. 386. There is nothing, so far as I have been able to find, in the last Act applicable to counties having three hundred thousand inhabitants or more, as to qualifications of jurors, which is in conflict with the provisions in said Act No. 47 (Acts 1931, page 55 et seq.)

No part of said Act No. 47 is specifically repealed by said Act No. 386. All the repealing done by said Act No. 386 is done by implication—that is by a provision of the last Act being in conflict with a provision of the first Act. Repeals by implication are not to be favored, and a special statute operates a repeal of a general law only so far as their provisions are repugnant.

Jackson vs. State, 76 Ala. 26,
Hern vs. Seymour, 76 Ala. 270.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 13, 1932.

Hon. D. R. Boyd, Solicitor,
Inferior Court Randolph County,
Roanoke, Alabama.

Solicitor must concur in the granting of probation and suspension of sentence under an Act approved July 14, 1931, before such sentence can be suspended and probation granted.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of May 10, 1932, in which you request my opinion as follows:

"(1) Is it necessary for the Solicitor to give his approval both as to those cases where the punishment is fixed in the penitentiary and in cases where the punishment is fixed at hard labor for the county?

"(2) Where only a fine has been imposed is it necessary for the Solicitor to give his approval for the defendant to be placed upon probation?"

In answering both of your inquiries it is necessary to construe the Act of the Legislature approved July 14, 1931 (General Acts 1931, p. 444).

It is my opinion that a sentence cannot be suspended and probation granted a defendant who has been convicted for an offense unless the Solicitor prosecuting the case concurs in such action by recommending the same. You will note that the court trying the case, or his successor in office, shall have the power to grant such probation on the approval of the solicitor after conviction, etc. I construe this to mean that the matter is not properly before the court for action until it is called to its attention by the solicitor in his recommendation.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 13, 1932.

Hon. Ben H. Baker, Clerk,
Circuit Court Barbour County,
Clayton, Alabama.

Fees—Preparation of transcript to Appellate Courts by Clerks of the Circuit Court and Registers in Chancery.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of May 18, 1932 in which you inquire as to what is the proper charge per hundred words where the Clerk of the Circuit Court or the Register in Chancery makes a transcript in appeal cases to the Appellate Courts and supplies the original to the Appellate Court and one copy to each of the attorneys in the case and keeps an office copy.

I am of the opinion that the proper charge is 15c per hundred words for making the original.—**Section 7278** and **Section 7283**, Code of Alabama, 1923 and Acts 1931, page 331.

I am also of the opinion that the proper charge is 5c per hundred words for each additional copy thereof.—Section 7278 and 7283, supra.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 13, 1932.

Hon. Jas. C. Brown,
Register in Chancery,
Tuscaloosa, Alabama.

Register in Chancery—Commission on sales determined by consideration passed.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of April 30, 1932 in which you state that a piece of real estate is sold through the Equity Court by the Register for division among heirs under a decree of the court, and same is sold subject to a mortgage indebtedness and municipal improvements against same, the purchaser at sale assuming the indebtedness against said property and paying balance in cash.

You inquire how the commission of the Register is to be computed. In other words, is it to be computed on the actual cash paid or upon the cash plus the amount of mortgage indebtedness and municipal improvements indebtedness?

I am of the opinion that the commission of the Register in Chancery, which is paid under Section 7283, Code of Alabama ,1923, is computed upon the total amount of the actual consideration paid for the property, which in the instant case would be the amount of cash paid plus the mortgage indebtedness and the municipal improvements indebtedness. The amount of consideration paid for the purchase of property is not merely the cash paid but the assuming of the indebtedness thereon. The assumption of these indebtednesses is as much a part of the consideration paid for the purchase price of said property as the actual cash payments.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 13, 1932.

Hon. W. G. Rains, Solicitor,
Sixteenth Judicial Circuit,
Gadsden, Alabama.

Schools—Election of County Superintendent of Education under Section 138 School Code of 1927—minutes cannot be amended to extend term of office.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of May 21, 1932 in which you state that the County Superintendent of Education was elected for a term of two years and his present term will expire on the 30th day of June, 1932. Said election was held under Section 138, School Code of 1927.

You request my opinion as to whether or not the County Board of Education can, prior to the termination of his present term of office, amend its minutes and extend the time for one year thus making his term three years from the time he was first appointed on June 30, 1930.

I am of the opinion that your inquiry should be answered in the negative.

Section 138, School Code of 1927 provides in part as follows: "County Board of Education of each county shall appoint a superintendent of schools for a term of from two to four years from the first day of July, next succeeding his appointment."

When the County Superintendent of Education is appointed under and by virtue of said section, I am of the opinion that he is appointed for a definite term of office, provided said term shall not be less than two years nor more than four years. To allow the Board to amend its minutes would have the effect of increasing his term of office which, in my opinion, is violative of both the letter and the spirit of the above quoted section.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 13, 1932.

Hon. Pete B. Jorman, Jr.,
Secretary of State,
CAPITOL.

Party running for President of the United States must qualify under Article 21, Code of Alabama, 1923, to become a candidate to be voted on in Alabama.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of April 22, 1932 relative to one Mr. H. J. Ryan who states that he is a candidate for President of the United States running as an independent.

You request my opinion as to how and where Mr. Ryan's name should appear upon the ballot.

I call your attention to Article 21, Code of Alabama, 1923 (Political Code, p. 637). If Mr. H. J. Ryan wants to be voted on for President of the United States he will have to align himself with some party or organization who will have in the field a list of electors in accordance with Section 536 of Article 21, supra. The President and Vice-President of the United States are not elected by popular vote but by electing electors.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 13, 1932.

Hon. J. M. Money,
Judge of Probate,
Scottsboro, Alabama.

Sheriff—Feeding and care of insane persons confined in county jail.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of March 19, 1932 in which you state the sheriff of the county has filed a claim against Jackson County for $90.00 for feeding insane prisoners in jail awaiting admittance to the Insane Hospital of the State.

You request my opinion:

Is the Commissioners Court of my County justified in paying this claim?

Answering your inquiry, I call your attention to Section 2798, Code of Alabama, 1923, which is as follows:

"2798. Compensation to persons caring for insane paupers.—The court of county commissioners and county boards of revenue shall provide a schedule of fees in their respective counties, to be paid out of the county treasury on their order, to the county officers, or any person duly deputized by such officers, to temporarily provide for the care and maintenance of any person alleged to be insane, when such person has no means of paying such expense, pending an investigation into the mental status of such alleged insane pauper, before the probate judge of such county. Such judge shall, at the same time, hear evidence and decide therefrom the question of the ability of such alleged insane pauper to pay such expenses."

I think when the provisions of the above section have been followed it is broad enough to authorize the Commissioners Court to pay any bill that may have originated for the care of such insane persons.

I deem it well in this connection to call your attention to Section 4581, Code of Alabama, 1923, which is as follows:

"4581. Arrest of insane persons or maniacs.—Any insane person who is at large and not under the control, restraint, or management of any person may be taken into custody or arrested by any officer or person and carried immediately to the probate judge of the county who shall issue a mittimus or commitment of such insane person either to the county jail or insane hospital until inquisition proceedings may be had as to such person so confined. Thereafter the person so confined shall abide by the decree or order of the inquisition proceedings. When such person is brought before the probate judge, if the judge shall be satisfied that the person brought before him is not insane, he may direct the discharge of such person from custody and arrest and decline to institute the proceedings of lunacy. But if the judge of probate be satisfied that such person is insane, or if he has a reasonable doubt as to his sanity, he shall have the person or persons so bringing the alleged insane person before him to institute the inquisition proceedings of lunacy as is now provided by law."

Opinions Attorney General, June 15, 1931.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 13, 1932.

Hon. John J. Flowers,
Tax Assessor, Montgomery County,
Montgomery, Alabama.

1. Taxpayer may give his estimate of value of real estate, but is not required to do so.

2. Tax Assessor not required to accept taxpayer's valuation.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of June 3, 1932 in which you ask the following questions:

"1st. Is a taxpayer permitted to put a valuation on his real estate for taxation?

"2nd. If so, has the Tax Assessor got to accept the valuation placed on real estate by the owner?"

In answer to your first question, I advise that in my opinion a taxpayer may give his estimate of the value of his real estate. He is not required to do this and it is not binding.

In answer to your second question I advise that the Tax Assessor is not required to accept the valuation of the taxpayer. It is his duty to make the valuation and assessment.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 13, 1932.

Hon. G. H. Stacy,
Clerk and Register of Circuit Court,
Centerville, Bibb County, Alabama.

Commission of sheriff on fines imposed in criminal cases is an independent item of cost and should be collected as a part of the costs and not taken from the fine in making settlement with the clerk.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of April 30, 1932, in which you request my opinion as follows:

> Where an execution is issued by the clerk and placed in the hands of the sheriff for fine and costs in a criminal case is the sheriff entitled to five per cent of the fine, which means he turns into the county the fine less five per cent or should he in addition to collecting the entire fine collect his commission of five per cent?

The commission of the sheriff in cases like the one you refer to, becomes a part of the costs and should be collected over and above the amount of the fine. In other words, the whole of the fine should go to the county and the sheriff should collect his commission as an independent item of cost.

Barron, Adm'r. vs. Tart, 18 Ala. 668.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 13, 1932.

Hon. P. B. Jarman, Jr.,
Secretary of State,
CAPITOL.

Filing fees—Eleemosynary corporations.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of May 27, 1932 in which you request my opinion as to whether or not a benevolent association (eleemosynary nature) should pay the fee provided by Section 6975, Code of Alabama, 1923.

I am of the opinion that your question should be answered in the negative. Eleemosynary corporations are organized under Article 23 of Chapter 274 (Sections 7167-92) Code of Alabama, 1923 and not under Article 1 (Section 6964, 6980) of said Chapter, which is applicable to corporations of a business character.—Biennial Report Attorney General, 1920-22, pages 417, 430. Therefore, Section 6975 has no application to eleemosynary corporations.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 13, 1932.

Hon. C. C. Hart,
Tax Assessor Covington County,
Andalusia, Alabama.

Court of County Commissioners under Act No. 584 (Acts 1931, page 671) may fix one sum in payment of services to Tax Collector required by Sections 46 and 47 (as amended) Acts, 1923, page 152.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter with reference to payment of compensation for preparing plat books as required by Section 46, Acts 1923, page 152 and Section 47 Acts 1923, page 152, as amended by Act No. 584 approved July 30, 1931, Acts 1931 page 671.

You state that the Court of County Commissioners has paid you the sum of $250.00 under the amendment of 1931 for preparing the books required by Sections 46 and 47.

In the absence of contract, and you state that there was no contract, I am of the opinion that the Court of County Commissioners were acting in accordance with law. Section 47 which must be read along with Section 46 just preceding provides:

"The Court of County Commissioners or Court of like jurisdiction shall pay out of the general fund of the county for making out the plat books required by this and the preceding Section a reasonable compensation to the person performing said work."

This Section as amended makes exactly the same provision except that the compensation is specifically provided for. Therefore it appears that the intention of the Legislature was that the Court of County Commissioners should provide compensation as fixed for performing the services provided for by both Sections 46 and 47.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 13, 1932.

Hon. John W. Cook, Member,
House of Representatives,
Eutaw, Alabama.

1. The Court of County Commissioners is of statutory creation and has no powers except such as are given it by statute.

2. There is no power given it by statute to donate money from the general fund of the County to the general fund of the County Child Welfare Department. At least, I have not been able to find any such and none has been suggested.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of February 20th reached me on February 24th. Owing to the press of work on this office, I have not had opportunity to answer sooner.

You ask if, in my opinion, the Board of County Commissioners have authority to donate money out of the County funds to the general fund of the Child Welfare Department of the County. You call my attention to Act No. 339, Approved July 2, 1931.

In reply will say the Court of County Commissioners is entirely of statutory origin and has no power except such as given it by statute. It has no inherent powers. It can never act, unless it can find a valid statute giving it authority to do such Act.

On examination, I find no such authority given the Court of County Commissioners. In my opinion, said Act No. 339 is not authority for such a donation to the general fund of the County Welfare Department. It provides for the appropriation of a fund to be expended by the County Board of Child Welfare for the relief of children under eighteen years of age. Disbursements to be made upon itemized statements approved by the County Child Welfare Superintendent or agent of the County Welfare Board and Chairman of the County Child Welfare Board.

Such a donation cannot be made by the Court of County Commissioners to the general fund of the County Child Welfare Department to be used as such general fund may be used. Disbursements are to be made on order of the County Commissioners upon itemized statements as provided by said Act. The money appropriated remains in the County Treasury until disbursed as provided by said Act.

I find no authority for such a donation as the one inquired about.

Of course, there are certain specific expenses of the County Child Welfare Department to be paid for by the County for which the Court of County Commissioners must provide as provided by statute; but such an appropriation as the one inquired about is not provided for.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 13, 1932.

Hon. Robt. T. Simpson, Solicitor,
11th Judicial Circuit,
Florence, Alabama.

Gaming and lotteries—Under facts set out there is no violation of criminal statutes.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of May 2, 1932 in which you state that a certain bottling company has been putting on an advertising campaign as follows: "Under the cap of one out of every twenty-four bottles sold for five cents is a metal disk which entitled the purchaser of the drink to draw from five cents to one dollar, depending on how lucky the purchaser is.

You request my opinion:

"Does this method of advertising constitute a violation of the law?"

I am of the opinion that your inquiry should be answered in the negative. Whether or not the above is a lottery is a mixed question of fact and law. From the facts set out, I am of the opinion that such is not a lottery.—**Yellow-Stone Kit vs. State**, 88 Ala. 196, 7 So. 338.

The rule laid down in said case is as follows: "If a distribution is a pure gift or bounty, and not a name or pretense merely, which is designed to evade the law, the scheme is not a lottery."

It appears that value is received upon the original purchase and the prize offered is in addition, same being for the purpose of stimulating trade. The case of Yellow-Stone Kit vs. State, supra, discusses this matter at great length.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 13, 1932.

Hon. J. N. Mullins,
Circuit Solicitor,
Dothan, Alabama.

Bonds of depository of Houston County must be made by a Surety Company as provided by Act No. 478, approved July 23rd, 1931, (Acts 1931, page 557).

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of January 13th, 1932 was duly received. You state the following as facts:

> The Dothan Bank and Trust Company, a State banking institution, is the depository for Houston County for the current calendar year. By order of the Court of County Commissioners of Houston County, the bond of said depository was fixed at Fifty Thousand Dollars.
>
> The depository bank now desires to give a bond in the amount of Five Thousand Dollars and to place the Bank's securities, viz: Houston County bonds, as security for its additional bond of $45,000.00.

You ask my opinion if such method of complying with the law could be used.

In reply will say that the requirements of the depository in giving bond is fixed by Section 317 of the Code of Alabama, and Act No. 478, approved July 23rd, 1931. The last sentence of Section 1 of said Act provides:

> "Provided, however, that all official bonds shall be made by a surety company authorized to do business in the State of Alabama."

In my opinion the requirement of the Act is plain and unambiguous. It is not susceptible of any other construction than what it plainly says. Under such construction, bonds of Houston County could not be used as surety by such depository instead of the bond required by said Act.

The Attorney General has no legislative powers. He is legally bound to construe the law as fixed by the Legislature, in cases where constitutional limitations have been observed by the Legislature.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 14, 1932.

Hon. Roy O. Hill,
Clerk, Circuit Court,
Dothan, Alabama.

Bill for telephone service for the different county officials is not a preferred claim as designated by Section 231, Code of Alabama, 1923.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of April 21, 1932, in which you state that the different county officers in the courthouse have telephone service provided by the county, and that the county is now only paying preferred claims. You desire my opinion as to whether or not a charge for telephone service is a preferred claim.

I find no authority of law for holding that bill for telephone service for the different county officers is a preferred claim against the county. I am of the opinion such claim is not among those listed in Section 231, Code of Alabama, 1923. This section sets out what claims are preferred against the county, and I do not think there is any item mentioned in said section which could be construed to include a bill for telephone service.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 14, 1932.

Hon. J. Holland,
Member, Legislature,
Moulton, Alabama.

Lawrence County—Act No. 195, approved May 20, 1931 (Gen. Acts 1931, p. 62) providing for election of a County Superintendent of Education for Lawrence County, etc. is not violative of Section 106, Constitution of Alabama, 1901.

Opinion by Assistant Attorney General McCall.

Dear Sir:

This acknowledges receipt of your letter of February 13, 1932 together with other correspondence relative to the above cited act.

It appears that the constitutionality of this act has been questioned on the sufficiency of the notice published under Section 106, Constitution, 1901. The publication of the notice in this case was as follows:

> "Notice is hereby given that a bill will be introduced in the Alabama Legislature at the regular 1931 session, the caption of which reads as follows:
>
> 'A bill to be entitled an Act to provide for the election of a county superintendent of education of Lawrence County, Alabama to fix his term of office, to prescribe his salary, and the manner of payment, to define his qualifications, powers and duties, and to provide for the election of his successor in office.'"

You request my opinion:

> "Was the above notice sufficient compliance with Section 106, Constitution of Alabama, 1901?"

In answer, will say that, in my opinion, said notice constitutes sufficient compliance with said section of the Constitution.

> State ex rel Van Deusen vs. Williams, 143 Ala. 501;
> Wallace vs. Board of Revenue of Jefferson County, 140 Ala. 491;
> City of Union Town vs. State ex rel Glass, 145 Ala. 471;
> Town of Tallassee vs. Toombs, 157 Ala. 160;
> Roper vs. State, 210 Ala. 440, 98 So. 286;
> Head vs. Hood, 214 Ala. 353, 107 So. 854.

The "substance" of a proposed local law of which the Constitution requires notice to be published means more than "subject" with which Section 45, Constitution deals; it means the essential and material parts of the proposed law, an abstract or compendium thereof, such as will give the people affected thereby fair information of what the law will be to the end that those opposed to it, or to any material part thereof, may have opportunity to protest against and oppose its enactment.

The publication in this case gives notice of intent to introduce a bill: (1) to provide for the election of a County Superintendent of Education of Lawrence County, Alabama, (2) to fix his term of office, (3) to prescribe his salary, (4) and the manner of payment, (5) to define his qualifications, (6) powers, (7) duties, and (8) to provide for the election of his successor in office.

The Act, itself, does nothing more than this.

In order to comply with Section 106, Constitution, it is not essential that the publication deal with each and every mere detail set forth in the body of the proposed bill. This would defeat the purposes of Section 106, Constitution, supra.

A narrow and little interpretation would destroy all power of amendment in the Legislature, so that the Legislature would be required to accept, if at all, every local bill in the exact terms of its proposal.

The Constitution does not proceed upon the theory that all the details of every proposed law will be worked out in advance of and without the aid of legislative wisdom. It requires only that the local people shall be advised of the circumstances of the proposed law, of its essential provisions, of its most important features. The Constitution is complied with if the notice contains a fair compendium of the proposed bill in all its essential features; it is not the purpose to interfere with the rights of the Legislature to shape up and work out the details of legislation.

It is my belief that the notice in this case contains a fair compendium of the Act in all its essential features.

The word "substance" is not synonymous with "subject," 143 Ala. 501 (39 So. 276); 140 Ala. 502 (37 So. 321).

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 16, 1932.

Hon. A. F. Harman,
State Superintendent of Education,
CAPITOL.

School Trustees—The first Saturday in May 1932 and every two years thereafter is the date fixed by law for election of school trustees, and if not held on this date the office of trustee of said school becomes vacant and it becomes the duty of the county board of education to elect trustees for such school under Section 3 of the Act approved August 1, 1931 (General Acts 1931, p. 672).

Opinion by Assistant Attorney General Haynes.

Dear Sir:

In your letter of recent date you state that the patrons of a number of schools in the various counties of Alabama failed for different reasons to elect trustees of their schools on the first Saturday in May, 1932, as provided by Section 1 of an Act approved August 1, 1931 (General Acts 1931, p. 672).

You request my opinion:

"Can an election yet be held under the law? If not how are trustees for the schools not holding an election on the date fixed by the Act, supra, to be supplied?"

As to your first inquiry my answer is in the negative. The law fixes a specific date on which these elections shall be held, viz: the first Saturday in May, 1932 and every two years thereafter, and makes no provision for any other date of election. Therefore, there is no authority of law for holding such an election on any other date.

Answering your second inquiry, where the patrons of any school fail to elect trustees for said school on the date fixed by law, it is my opinion that the office of trustee of any such school becomes vacant, and it is the duty of the county board of education to proceed to elect trustees for such school under Section 3 of the Act, supra.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 17, 1932.

Hon. W. M. Vaughan,
Judge of Probate,
Selma, Alabama.

A day laborer does not come under the provisions of Section 8088, Code of Alabama, 1923, as to garnishment.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of May 12, 1932 in which you request my opinion as follows:

"Please advise whether, under Section 8088 of the Code, money due by the County to a day laborer, who works on the roads and is hired only by the day, is subject to garnishment?

"1. Is he such official or employee as the statute contemplates?"

"2. Is his compensation properly called salary, and subject to garnishment?"

I do not think a day laborer, that is a person working for the county by the day, comes under the provisions of Section 8088, Code of Alabama, 1923. You will note the last part of this section speaks of salary.

Salary in its common acceptance means so much per month, per quarter or per year as distinguished from a day laborer. Webster defines salary as follows:

> "The compensation or consideration paid or stipulated to be paid to a person at regular intervals for services; fixed regular wages as by the month, quarter or year."

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 17, 1932.

Hon. Landon G. Smith, Director,
State Highway Department,
CAPITOL.

Courts and judges trying defendants for violation of law are bound by the punishment fixed by the Legislature for such offenses.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of May 7, 1932, in which you request my opinion as follows:

> "It has come to my attention that a number of the Courts in the State in assessing fines for traffic violations do not fix the fine as set out in the Highway Code for such violations of the law. For instance, I have just received a fine from Barbour County of $5.00 for a case of driving while intoxicated. The minimum fine for this offense as set out in the Highway Code is $100.00. In a large majority of the courts they are fixing the fine for most all violations at $1.00 and cost. The costs average about $20.00.
>
> "Kindly advise if the courts have authority to fix fines regardless of the Highway Law."

A judge of any court trying a defendant for operating a motor vehicle while drunk or intoxicated, is bound by the statute governing such violations, and is without authority to assess a fine for a less amount than the minimum or a greater amount than the maximum fixed by statute, and I find that Section 48 of the Highway Law of the State of Alabama, approved August 23, 1927, fixes the amount of fine against a

defendant when convicted for operating a motor vehicle while drunk or intoxicated, at a minimum of $100.00.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 17, 1932.

Hon. T. R. Martin,
Judge of Probate, Bullock County,
Union Springs, Alabama.

Courts of county commissioners of the various counties of the State are authorized under Section 6755, Code of Alabama 1923, as amended by an Act approved July 31, 1931 (General Acts 1931, p. 759) to provide an office for the county solicitor.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of April 22, 1932 in which you request my opinion as follows:

"The question has arisen here with reference to office space for the County Solicitor for Bullock County. It so happens that there is not sufficient office space in the courthouse for this official. The Circuit Solicitor and the County Solicitor are law partners and occupy an office outside the courthouse, now the County Solicitor has requested that the Commissioners Court furnish him with an office at the expense of the county."

"Can the Commissioners legally rent or lease an office for the above named purpose and pay for same out of the general funds of the county?"

Under Section 6755, Code of Alabama, 1923 which pertains to the power of the commissioners courts of the various counties of the State, and especially as to their power to designate offices for the various county officials, and under this statute as amended by an Act approved July 31, 1931 (General Acts 1931, p. 759), it is my opinion that the courts of county commissioners of the various counties of this State may provide or designate an office for the county solicitor in the courthouse of the county, and if there is not sufficient office room in the courthouse may rent such offices outside.

This office is not overruling former opinions of this office holding a contrary view as under the law as it existed at that time those opinions

were sound, but the law having been amended, as suggested above, we are now able to give it a more liberal construction. Section 6755, supra, as amended where it pertains to the matter here under consideration, is as follows:

> " * * * it has the sole power to locate the courts in the rooms of the courthouse and to designate the rooms to be occupied by the officers entitled to rooms therein, including the circuit judge, if resident in the county, and to change the location of the courts, and the designation of the rooms for officers, as it may deem best and most expedient, and this shall be done by order of the court entered upon the minutes of the court at a regular term of court. In the event the courthouse is inadequate to supply office rooms for such officers, the court may lease such office rooms in a convenient location in the county site and to pay the rental from the county fund. * * *"

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 17, 1932.

Hon. Landon G. Smith, Director,
State Highway Department,
Montgomery, Alabama.

1. Deputy police officers working out of the Highway Department of the State, have jurisdiction to make arrests for traffic violations and no other, but they do not have exclusive jurisdiction. Other peace officers may make arrests in connection with such officers or independent of them.

2. If a police officer is required to attend court and pay his own expenses to and from said court, he would be entitled to mileage going to and from said court.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of May 7, 1932 in which you request my opinion as follows:

> "It has come to my attention that a number of the courts in assessing fines and fixing costs for traffic violations include in the cost an item of sheriff's or arresting fee. Also an item of costs for fixing bond. The sheriffs do not have anything to do with arrests made by traffic officers of this Department and the bonds are fixed and handled by our traffic officers. Should this arresting fee be charged? If so, should it be paid to the sheriff?

"I would also like to know if our officers are entitled to mileage for attending court. They pay their own expenses."

The sheriff of each county has the duty imposed upon him of seeing that all laws are enforced, and this places on him the duty to see that all traffic laws are enforced. He cannot be supplanted, in his county, by any other officer, and where he makes an arrest for an offense of this character, he is, as a matter of right, entitled to the arresting fee and the fee for the approval of the bond.

However, if the arrest is made by any other officer having authority to make the arrest, such officer would be entitled to the fee. Section 6 of an Act approved July 30, 1931 gives the Highway Department the right to employ deputy police officers who shall have full police power to prefer charges and make arrests for any violations of the highway laws and their activities are limited to such violations. But this does not mean that they have exclusive power. The sheriff of each county has all such power and jurisdiction and he may act in conjunction with such police officers or independently, as he may see fit. I call your attention to Section 10189, Code of Alabama, 1923 and especially to subsection 4 of said section, which is as follows:

"(4) It shall be the duty of sheriffs in their respective counties by themselves or deputies to ferret out crime, to apprehend and arrest criminals, and insofar as within their power to secure evidence of crimes in their counties, and to present a report of the evidence so secured to the solicitor or deputy solicitor for the county, or if there is an inferior or special statutory court within the county in which a solicitor prosecutes criminal cases, then to such solicitor."

Answering the latter part of your request, it is my opinion that if a highway police officer is required to attend court and he pays his own expenses, then he would be entitled to mileage for such attendance.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 17, 1932.

Mr. Sam Drinkard,
Sheriff, Marengo County,
Linden, Alabama.

Where sentence has been suspended and probation granted a defendant in criminal cases, execution should issue against the defendant for costs, and if returned "no property found" becomes a charge against the Fine and Forfeiture Fund of the County.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of May 27, 1932 in which you request my opinion as follows:

> "When a defendant is tried and convicted by a jury for the offense of manufacturing prohibited liquor and the possession of a still, and is sentenced by the judge trying the case, and the sentence is suspended by said judge, is the sheriff's fee of $50.00 allowed for seizure of stills and furnishing evidence that brought about said conviction under Section 4659 of the Code of Alabama, 1923, payable out of the Fine and Forfeiture Fund of the County, or is same payable by the State just as if the defendant's sentence had not been suspended."

The State is not liable for any costs until the defendant has been convicted, sentenced and delivered to the Convict Department. This office has repeatedly held that the judge of any court trying a defendant charged with a criminal offense, is without authority or power to suspend judgment for costs. The power conferred by an Act approved July 14, 1931 (General Acts 1931, p. 444) known as the suspended sentence law, only clothes the judge trying the case with power over sentences to the penitentiary and sentences to hard labor where the hard labor is imposed as punishment direct or in payment of fine. Therefore, it is my opinion it is the duty of the clerk of the court where a suspended sentence has been given and probation granted, to issue execution against the defendant for the costs of the case, and if the execution is returned "no property found," the cost may then be paid out of the Fine and Forfeiture Fund of the County under Section 4039, Code of Alabama, 1923, as amended by an Act approved February 18, 1927, which provides in part as follows:

> " * * * or in which defendants have been convicted, and have been proved insolvent by the return of execution 'no property found.' "

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 17, 1932.

Hon. G. O. Wallace,
Judge of Probate,
Clayton, Barbour County, Ala.

Notaries Public and Ex Officio Justices of the Peace are not entitled to free distribution of the Code of Alabama and the Acts.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of May 17, 1932 in which you request my opinion as follows:

"Are Notaries Public and Ex Officio Justices of the Peace entitled to free copies of General Acts of the Legislature which are distributed through this office to Justices of the Peace?"

It is my opinion the Legislature did not include notaries public and ex officio justices of the peace in Section 794, Code of Alabama, 1923, in designating what officers are furnished with a copy of the General Acts. You will note it says justice of the peace. I am of the opinion this section refers to the constitutional office of justice of the peace as set out in Section 168 of the Constitution of 1901.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 17, 1932.

Hon. G. H. Howard,
Judge of Probate,
Wetumpka, Alabama.

Tax collectors are only entitled to 2½ cents for filing name with the Judge of Probate under Sections 3035-6, Code of Alabama, 1923 and not 2½ cents for each payment.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of March 28, 1932 in which you request my opinion as follows:

"The Tax Collector is allowed 2½ cents each for the names reported to the Probate Judge as having paid poll tax. In case a person pays poll tax for more than one year and his name is written on the receipt for each year they are paid is the tax collector allowed 2½ cents for each time he writes his name on the report?"

It is my opinion the tax collector is only entitled to the commission of 2½ cents on each name filed with the Judge of Probate on or before the 15th day of March of each year under Section 3035 and Section 3036, Code of Alabama, 1923. If a person pays his poll tax, say for the years 1931, 1930, 1929, and 1928 his name should only appear once on the list filed with the Judge of Probate, and opposite his name there should be

noted the years for which he has paid according to his poll tax receipt. In issuing his receipt to any person paying poll tax, the collector only writes the name once and indicates by a cross mark the years for which the receipt is issued, and likewise he should follow the same method in making the list referred to above.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 17, 1932.

Hon. Geo. E. Stone, Treasurer,
Mobile County,
Mobile, Alabama.

Claim of dentist for extracting teeth of parties confined in county jail not a preferred claim.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of May 16, 1932 in which you request my opinion as follows:

> "Under Section 231 of the Code of Alabama, or under other provisions of law, is the service of a dentist in extracting teeth of jail prisoners under direction of the County Physician, a preferred claim against the county?"

I am unable to find any law or statute that makes the claim of a dentist for extracting teeth of inmates of the county jail under direction of the County Physician, a preferred claim. It is not included under Section 231 which enumerates what claims against the county are preferred, nor is it included under the amendment to said section by an Act approved June 18, 1931 (General Acts, 1931, p. 335).

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 17, 1932.

Hon. Vance Cleveland,
Tax Collector, Bibb County,
Centreville, Alabama.

State Bank which paid tax on real estate when due and paying tax assessed against the shares at different time liable for interest only on deferred payment.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of June 4th in which you state:

"Please furnish me your opinion in the following matter:

"The State Banks in Bibb County paid sometime in January their tax on their fixtures and real estate. Now they are paying on their capital stock and I desire to know if the State and County are entitled to the interest on the full amount of the receipt or on the balance they are now paying."

In reply I beg to advise that in my opinion, interest should be paid only on the balance of the taxes due and which are being paid at this time. The tax assessed against the real estate having been paid in January, there would be no liability for interest in this amount paid when due.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 17, 1932.

Hon. J. M. Money,
Judge of Probate,
Scottsboro, Jackson County, Ala.

Claims not presented to the Commissioners Court which have to be audited and allowed within twelve months from their accrual, are barred by the statute of limitations of twelve months.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of May 30, 1932 in which you request my opinion as follows:

"A claim has been presented to the Court of County Commissioners for erection of a Band Stand on the Courthouse lawn in the year 1914.

"Will you kindly advise me if such a claim can be legally allowed and paid by the County?"

If this is the first time this claim has been presented to your Commissioners Court for audit and allowance, it is barred by the statute of limitations of twelve months under Section 228, Code of Alabama, 1923, which is as follows:

"228. Claims barred if not presented.—All claims against counties must be presented for allowance within twelve months after the time they accrue, or become payable, or the same are barred, unless it be a claim due to a minor, or to a lunatic, who may present such claim within twelve months after the removal of such disability."

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 17, 1932.

Mr. Jesse M. Smith,
Tax Collector, Baldwin County,
Bay Minette, Alabama.

Tax Collectors—Court of County Commissioners may make allowance for errors and insolvencies at any regular or adjourned session of the June Term of said Court.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of May 26th in which you state:

"The first Monday in June of each year the several Tax Collectors are allowed to appear before the County Commissioners and have allowance made for errors in tax assessments and insolvents.

"Will you please inform me whether or not this allowance can be made or an additional allowance can be made in a supplemental list presented after the first Monday in June."

In answer I beg to advise that Section 3074 of the Code of 1923 provides that the Court of County Commissioners may make allowance to the Tax Collector for errors and insolvencies at its June Term. If the

Court of County Commissioners in addition to the regular term, should hold an adjourned or continued term in June, I see no objection to their allowance of such items at such times. However, I think the list in entirety should be passed on as a complete whole and not in the form of a supplemental list.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 17, 1932.

Hon. R. L. Shamblin,
Sheriff, Tuscaloosa County,
Tuscaloosa, Alabama.

Costs in juvenile and desertion cases—How taxed and paid.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of January 1, 1932 in which you state:

"We have had several cases in this County since I have been in office of desertion and non-support. The Judge of the Inferior Court issues the warrant and we go out and arrest the defendant. In most of the cases the wife relents and requests the release of the defendant and they go back together. We also have numerous cases of juvenile delinquent boys and girls. They are sent to the Reformatory at East Lake or placed back in the hands of parents on good behavior."

You request my opinion:

"How are the costs in these cases paid?"

Answering your first inquiry, it is my opinion that if the party is being prosecuted under Section 5571, Code of Alabama, 1923, 8th subdivision of said section, then the costs are paid in this case as costs in any other criminal matter. This subsection is as follows:

"(8) Any able-bodied person who shall abandon his wife and children, or either of them, without just cause, leaving her or them without sufficient means of subsistence, or in danger of becoming a public charge."

But, I call your attention to the fact that if he is being prosecuted under Chapter 157, Sections 4479 to 4495, both inclusive, then in this event there could be no costs taxed. I call your attention to the latter part of

Section 4492, Code of Alabama, 1923. The latter clause of this section reads as follows: "* * * there shall be no costs of any kind whatever taxed in cases arising under this chapter."

As to your second inquiry, I call your attention to Section 3558, Code of Alabama, 1923. This section is just about as plain as it can be written, and should give you all the information you desire as to this matter. It is as follows:

> "3558. Officer serving process, etc., under juvenile courts; costs and fees of.—All officers serving process from juvenile courts, or feeding prisoners committed by, or held for or under such courts, shall receive the same costs, fees, and compensation payable in the same manner and from the same source as are now allowed and paid for like services with respect to process issued by the circuit courts or courts of like jurisdiction, and for feeding prisoners committed by circuit courts or courts of like jurisdiction."

See Opinions Attorney General, 1922-24, page 352.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 17, 1932.

Hon. A. H. Hardaway, Treasurer,
Alabama Boys Industrial School,
Birmingham, Alabama.

Alabama Boys Industrial School—Deposit of funds by Treasurer.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of February 18, 1932 relative to whether or not you, as Treasurer of the Alabama Boys Industrial School, may accept Jefferson County Bonds in escrow as security for bank deposits made by you in lieu of a depository bond. You state that at the present time you are unable to secure a depository bond. You further state that you are bonded in the amount of $10,000.00 for the proper handling of state funds but this does not cover any balance you may have in case of a bank failure.

In reply to your inquiry I wish to state that the acceptance of such bonds in escrow may relieve you of criminal responsibility under Section 3973, Code of Alabama, 1923, but would not relieve you of civil liability in case of loss and should not relieve your bondsmen. Your bond should

not be so conditioned as to be relieved from liability in case of loss by means of bank failure.

The only provision I am able to find relative to the handling of funds of the Alabama Industrial School is Section 703 of the School Code of 1927 which provides as follows:

> "703. Treasurer: Bond required of.—The Treasurer of the School shall, before entering upon the discharge of the duties of office, execute bond payable to the 'Alabama Boys Industrial School' with good and sufficient sureties, and in such sum as the Board of Directors may prescribe and with condition to faithfully discharge the duties of his office."

There being no provision for a depository for said funds, you, as Treasurer, are in the position of an insurer; and the method of deposit is a matter of personal concern to you. A deposit in a bank in good faith with good and sufficient security would only relieve you of criminal responsibility under Section 3973, Code of Alabama, 1923, and not for civil liability, as above stated.

In connection with your inquiry I wish to refer you to the case of **National Surety Co. vs. State** et al, 219 Ala. 609, 123 So. 202, which discusses same at length.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 17, 1932.

Hon. T. R. Martin,
Judge of Probate,
Union Springs, Alabama.

Primary elections are held under the same regulations as are general elections unless modified by the Primary Law of 1931.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of March 28, 1932 in which you request my opinion as follows:

> "1. Is it necessary in order to comply with the Primary Election Law, that the ballots for the Primary Election be provided with a detachable stub as required for ballots of regular elections by Sec. 483, Code of Alabama, 1923?"

"2. Section 19 of the Primary Law of 1931 requires the clerks of the election to keep a numbered list of voters participating in the election. Section 26 of the same Act refers to 'both numbered lists.' Should both of these numbered lists or 'Poll Lists' be forwarded to the Chairman of the County Executive Committee after the ballots are counted, as required by Section 26 of the Act of 1931, or should one of them be sealed up in the ballot box, as required by Section 506 Code of 1923, relating to regular elections?"

It is my opinion the ballots should be printed with detachable stubs as these elections are held in the same manner and under the same regulations as are regular general elections except as modified by the Primary Law of 1931, and I do not find where this particular requirement has been modified.

See Section 4 of an Act approved February 25, 1931 (General Acts 1931, p. 73).

Answering your second inquiry, it is my opinion both numbered lists should be deposited and sealed in the box returned to the Chairman of the Democratic Executive Committee, or to the chairman of any other party entering the primary. I think this is the clear intent of Section 26 of the Act, supra.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 17, 1932.

Hon. S. H. Smith,
Clerk, Circuit Court,
Mobile, Mobile County, Alabama.

1. The clerk of the court is not required to issue certificate or transcript of judgment and sentence in cases placed by the court on probation unless this order is revoked and the defendant required to serve his sentence.

2. It is the duty of the clerk to issue execution against the defendant for the costs.

3. Such costs may or may not be collected as in the case of insolvent defendant depending on circumstances.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of January 21, 1932 in which you make the following statement:

"On January 20th, 1932, there were two cases on the docket of the Circuit Court of Mobile County, Alabama, against J. W. Poore, charged with the offense of forgery in the second degree on said January 20th, 1932, the said defendant J. W. Poore plead guilty in both cases, in the first case the court sentenced the said defendant to imprisonment in the penitentiary of the State of Alabama for the term of not less than two years nor more than two years and one day—in the second case the court sentenced the said defendant to imprisonment in the penitentiary of the State of Alabama for the term of not less than two years nor more than two years and one day, execution of sentence in said second case was by order of the court and upon recommendation of the State Solicitor suspended pending good behavior."

On the above statement of facts you request my opinion:

1. Is it the duty of the clerk to issue to the State Board of Administration a transcript of the judgment and sentence as he does in other ceses?

2. Is it the duty of the clerk to issue execution against the defendant for the costs of court?

3. Are the costs of court taxed and paid as in insolvent conviction cases?

Answering your first inquiry, I do not think where a party is convicted and then placed on probation it is necessary for you to send to the Board of Administration a transcript of the judgment unless at some time the probation order is revoked and the defendant is required to carry out the sentence, then it would become necessary to forward such transcript.

Answering your second inquiry, it is my opinion that it is the duty of the clerk to issue execution for costs in cases where the defendant has been put on probation as this office has held that the court is without power to include costs in its order granting probation.

Opinions Attorney General, Book 8 (office edition)

Answering your third inquiry, it may or may not be collected as in insolvent cases. First, it is your duty to issue execution if the costs are not presently paid, and if possible it is the sheriff's duty to make the costs out of the property of the defendant, but in case the execution is returned "no property fund," then in this event it would be payable as other insolvent cases.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 17, 1932.

Hon. Page S. Bunker,
State Forester,
CAPITOL.

Property—Patents issued by State under imperfect title and later acquires a perfect title—sufficiency of recordation.

Opinion by Assistant Attorney General Screws.

Dear Sir:

Please refer to an opinion of this office rendered to you under date of February 13, 1932 concerning the issuance of state patents to certain lands in Lawrence County. After further consideration of the matter, I am of the opinion that the second part of the opinion above referred to is incorrect. The following is a correct answer to your inquiries and should be substituted in lieu of the former opinion of February 13, 1932.

It appears that the lands were sold by the State of Alabama under an Act of Congress approved May 23, 1828. It further appears that there was some doubt as to the right of the State to convey said lands, but the lands in question were included in lands granted to the State of Alabama by Patent Number 1,208,092 July 22, 1926. In other words, the State only perfected its title in 1926.

Concerning the sales or grants by the State of Alabama, it appears that the records of transactions between 1838 and 1859 are not complete. In a few instances the records are complete showing a patent from the State to the individual in proper form. In most of the cases, however, all that is shown of record, is to whom the State's title was conveyed, when conveyed, the number of acres, and the fund which was to or did derive the benefit of the consideration paid or to be paid. These entries are found in the tract book as filed in the office of the Secretary of State and a copy of same on file in the office of the Judge of Probate of Lawrence County. A copy of the patent issued is not of record.

It further appears that said lands have been occupied openly and notoriously by those or their predecessors who claim title under the above circumstances.

You request my opinion as to what claim the State of Alabama has to the lands under consideration: (1) concerning those whose patent from the State is regular and of record, and (2) concerning those whose only evidence of patents having been issued to them or their predecessors is the record in the tract book as above described.

In the first instance, I am of the opinion that the State of Alabama has no claim whatsoever to said lands. Although the State may not have had a perfect title when the patent was issued, the after-acquired title

passed to the grantee. This point was specifically decided relative to State patents in the case of **State vs. Mobile & Ohio R. Co.** 201 Ala. 271, 78 So. 47.

In the second instance, I am also of the opinion that the State of Alabama has no claim to said lands. Section 7675 is as follows:

> "7675. Patents.—Patents issued by the United States or any state of the United States, and tract books kept in the probate offices of the counties as required by law, or certified copies of entries taken therefrom, must be received in evidence without further proof."

In the case of **Perryman vs. Wright,** 189 Ala. 351, 66 So. 648, it was held that the purpose of the above quoted section was to treat the entry of the tract book, referring to a patent (in the absence of evidence showing its incorrectness), as the patent, itself. In the instant case, the records in the office of the Secretary of State and the office of the Judge of Probate of Lawrence county show to whom the conveyance was made, by the state, when the conveyance was made, the number of acres and the fund that was to or did derive the benefit of the consideration paid or to be paid. Such being the condition of the entries in the tract books, I am of the opinion that under the authority of the above quoted section and case, that the said entries may be treated as the patents, themselves, in the absence of evidence to the contrary.

An opinion of the Attorney General rendered under date of February 13, 1932 being partly in conflict with this opinion, the same is hereby modified in accordance with the above.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 17, 1932.

Hon. G. O. Wallace,
Judge of Probate,
Clayton, Alabama.

The Act approved March 9, 1931 (General Acts 1931, p. 191) is unconstitutional and void violating Section 45, Constitution of Alabama 1901.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of February 19, 1932 in which you request my opinion as to the constitutionality of an Act approved March 9, 1931 (General Acts 1931, p. 191).

It is my opinion the Act to which you refer is unconstitutional and void. I call your attention to Section 45 of the Constitution of 1901, which section is in part as follows: "Each law shall contain but one subject, which shall be clearly expressed in its title." You will note the caption of the bill under consideration reads as follows: "To require all county officers who receive or distribute county funds or moneys to make quarterly reports to the Court of County Commissioners, Boards of Revenue, or other governing body of the County." We recognize the well settled principle of law that "It is sufficient if the matters regulated or forbidden in the body of the Act fall within the general purpose expressed in the title and relate to it."—**Benners vs. State**, 124 Ala. 97; **State vs. Stripling**, 113 Ala. 120.

But in the case under consideration, the caption of the Act expresses in general the intention to require of all county officers in the various counties of the State to make a quarterly report to the commissioners court or boards of revenue of the various counties, but said caption nowhere intimates that the bill contains a penalty clause which is to be enforced by a criminal prosecution as is found in Section 4 of said Act.

Chief Justice Brickell in the case of Builders' & Painters' Supply Co. vs. Lucas & Co. 119 Ala. 202, deals with a matter analagous to the question here, and in summing up, after eliminating the non-essentials contained in the brief and argument of counsel, says:

> "Act of 1896-7, to define general assignments, etc. unconstitutional.—'An act to further define general assignments and to prevent the fraudulent disposition of property.' (Acts 1896-7, pp. 1089-1090) declaring (Sec. 2), that particular acts of a debtor, the confession of judgment, or procurement of attachment—shall operate as a general assignment, and (Sec. 3), that the conveyance of property with intent to hinder, delay, and defraud creditors, etc., shall be a criminal offense, is violative of Article IV, section 2 of the Constitution, declaring that 'each law shall contain but one subject, which shall be clearly expressed in its title.'"
>
> Thomas vs. State, 16 Ala. App. 146.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 17, 1932.

Dr. Glenn Andrews,
State Prison Inspector,
CAPITOL.

The sheriff of any county, under Section 4835, Code of Alabama, 1923, may furnish from his farm, store or garden articles of food to be used in feeding prisoners but in doing this he must comply with all city ordinances regulating the use of such articles.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of March 11, 1932 also letter to you from Dr. C. A. Mohr, Health Officer, Mobile, which letter enclosed an ordinance of the City of Mobile regulating inspection of meats in said city. I notice that in Dr. Mohr's letter to you he states that the Sheriff of Mobile slaughters and dresses meats, brings them to Mobile and places in cold storage and uses them in feeding the prisoners confined in the jail of the County of Mobile; that the Sheriff claims that he does not come under the inspector's stamping ordinance of the City of Mobile pertaining to meats of all description.

You request my opinion:

"Is or is not the sheriff, under the statement of above facts, required to comply with the ordinance herewith enclosed?"

It is my opinion that Section 4835, Code of Alabama, 1923 does not immune the Sheriff of Mobile County from the operation of the City ordinance of Mobile, which prohibits persons within the City of Mobile or within its police jurisdiction from offering meats for sale or use which meats have not been inspected and stamped according to the City Ordinance hereto attached and which are intended for human consumption. Section 4835, supra, is as follows:

"4835. Sheriff may sell produce from his own farm.—Nothing in this article shall be construed to prohibit any sheriff from using from his own farm, garden, store or household the foodstuffs used in feeding prisoners and charging therefor a legitimate and fair market price."

The above quoted section permits a sheriff to use such articles in preparing food for the jail which come from his farm, garden or store, but certainly it was never the legislative intent that he should not comply with all the laws and regulations as to sanitation, safety and inspection of such meats when being used for human consumption. There is nothing in the statute above quoted, or the ordinance of the City of Mo-

bile that conflicts, nor can it be said that the statute supersedes the ordinance as each has its field of operation and are not in conflict, so it is my opinion that if the sheriff desires to use meats slaughtered from his own farm in feeding prisoners in the county jail, he must comply with the ordinance of the City of Mobile in the handling of same, which ordinance is as follows:

"AN ORDINANCE PROHIBITING THE STORAGE WITHIN THE POLICE JURISDICTION OF UNSTAMPED MEATS.

"BE IT ORDAINED by the Board of Commissioners of the City of Mobile, as follows:

"Section 1: It shall be unlawful for any person, firm, corporation or association, within the City of Mobile, or its police jurisdiction, to hold in storage on his, their or its account, or for account of any other person, firm, corporation or association, any carcass or part of a carcass of any animal, intended for use as food for human beings, or any meat intended for use by human beings, if said carcass or part of carcass or meat has not been properly stamped and inspected as required by law.

"Section 2: It shall be the duty of the Health Officer, or his authorized agent, to condemn and destroy carcass or part of a carcass or any meat held in storage, in violation of this ordinance.

"Section 3. Any person, firm, corporation or association violating any of the provisions of this ordinance shall be fined by the Recorder in the sum of not less than $10.00 nor more than $100.00.

"Section 4: This ordinance shall be in force and effect on and after its adoption and publication.

"Adopted:
6-25-29 City Clerk."

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 17, 1932.

Hon. Roy O. Hill,
Clerk, Circuit Court,
Dothan, Houston County, Alabama.

1. In felony cases where defendant is placed on probation, execution should issue for costs.

2. Likewise in misdemeanor cases, where defendant is placed on probation, execution should issue for costs.

3. If execution in either of the above cases is returned "no property fund" then the costs are payable out of the Fine and Forfeiture Fund of the County.

4. The Board of Administration is not liable for costs in probation cases as long as the defendant is under such order.

5. The transcript of the minutes of the court should not be sent to the Board of Administration where the defendant is under probation unless such order is revoked and the defendant required to serve his sentence.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of January 18, 1932 in which you request my opinion as follows:

"Kindly refer to the Act of 1931 in regard to judges placing convicted persons on parole, or probation, and advise me the procedure to be followed in getting costs for officers and witnesses in such cases.

"1. In felony case, should execution be issued against such defendant if costs are not paid when placed on probation?"

"2. In misdemeanor cases, when defendant is placed on probation without condition that he pay costs, should execution issue against him for costs?

"3. If affirmative answer is given in above cases, and execution be returned marked 'no property,' would cost then be payable out of Fine and Forfeiture Fund?

"4. Is the Board of Administration liable for costs in such cases?

"5. Should transcript of minutes be sent to Board of Administration in such cases, with notation of defendant being placed on parole?"

My answer to your first inquiry is in the affirmative.

Answering your second inquiry, this office has held that the court passing sentence and granting probation to a defendant who has been

convicted of a criminal offense, is without authority to grant such probation for costs, and this being true execution should issue for the costs.

Answering your third inquiry, my answer is in the affirmative. The course, to pursue in cases of this kind, is provided for under Section 4039, Code of Alabama, 1923, as amended by an Act approved February 18, 1927 (General Acts 1927, p. 45). This Act says in part: "* * * * or in which defendants have been convicted, and have been proved insolvent by the return of executions 'no property found.'"

Answering your fourth inquiry, it is my opinion the Board of Administration is not required to pay the costs as long as the defendant is on probation.

Answering your fifth inquiry, it is my opinion you do not send this transcript when defendant is placed on probation unless the court by a subsequent order revokes the order granting the probation and the defendant is required to serve his sentence.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 20, 1932.

Hon. D. W. Crosland,
Judge of Probate,
Montgomery, Alabama.

State and political subdivisions of the State, including towns and cities, not liable for Federal tax on checks drawn in the course of disbursing public funds.

Opinion by the Attorney General.

Dear Sir:

Your inquiry whether checks, drawn by you in the handling of public funds, State and County, or funds of any other political subdivision of the State are to be taxed by the recent Act of Congress, is at hand.

This is to advise you that in the opinion of the writer, no bank should charge your official account, where you are disbursing funds of the State or a political subdivision thereof, with the tax.

The principle is too well established for elaboration that the Federal Government may not, by taxation, hinder, hamper or burden the State or its agencies in the performance of Governmental functions.

To exact a tax upon the drawing of checks by you in handling the public funds of the character mentioned in your inquiry would be directly to hamper the State or its agencies in the performance of its ordinary functions.

We, of course, are familiar with the legislative authority for placing moneys in banks in your official capacity. It will serve no purpose to discuss this authority or the limitations placed thereupon. It suffices to observe that a tax upon checks or drafts drawn by you in the disbursement of public funds, as the same are contemplated herein, would be, in effect, a tax to be borne by the State or an instrumentality thereof—neither would the hindrance be remote.

In your peculiar official capacity, it may be that you handle, by bank account, certain funds of private persons, firms, or corporations. The tax in such cases would be borne by such persons. Checks, on such accounts are, in my opinion, not immune from taxation. The hindrance to the State is remote rather than direct.

While I cannot, at this time, conceive of public funds handled by you for the State or its agencies, coming into your hands as a result of some enterprise of the State, not governmental, but of a private nature, such funds would not in my opinion be immune from the tax, applying the principle of the South Carolina Case, often cited.

The writer is fully aware of the fact that what has been said before in this opinion with reference to immunity from the tax in question has to do with the powers reserved to the State and with those granted by the State. The assertion of the principle of the right of the State as a rule is met with derision and subjects the proponent to ridicule by those of national power, but those of national power, have or soon acquire a national aspect.

This principle of immunity we are encouraged to assert by judicial pronouncement—decisions analogous.

Reference has been made to the principle in the South Carolina case because it is believed to be sound. It is to be hoped that the converse —where the Federal Government engaged in a private enterprise—may be established by judicial pronouncement.

Nor am I of the opinion that the banks with which you do business, as an agent of your government, must pay the tax in question. This is in view of the fact that it was clearly the intention of Congress that the drawer of the check or draft bear the burden of the tax. This is in line with the holding of the Supreme Court of the United States in the case of Panhandle Oil Company v. Knox.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 20, 1932.

Hon. J. N. Howard, Register,
Circuit Court, Lauderdale County,
Florence, Alabama.

Costs in cases where the State seeks to condemn property connected with transportation of prohibited liquors, is not payable out of the Law Enforcement Fund unless there is a decree of the court rendered against the State.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of May 10, 1932 in which you request my opinion as follows:

"I have in Chancery Court a case of the State of Alabama, Complainant vs. Jerry Getty, Respondent, in which a Ford car was confiscated for transportation of liquor and was sold in this court, not bringing enough to pay court costs. The difference between the amount of court cost and the amount the car brought at sale is $36.03. How will I proceed to collect out of the prohibition fund of the State the balance of $36.03 to satisfy the court costs? In case the cost is not collectible from the State Prohibition Fund, how will I prorate the $12.00 received from the sale?"

The costs in cases of this character are not payable out of the Law Enforcement Fund unless there is a decree of the court rendered against the State. I gather from your statement of facts the decree in this case was not rendered against the State, but against the respondent. Therefore, the State would not be liable for any part of the costs under Section 4785, Code of Alabama, 1923, which is as follows:

"4785. Payment of costs when decree rendered against state.—In all cases filed under this article for the purpose of condemning and selling conveyances and vehicles of transportation of any kind on account of their use in the transportation of prohibited liquors or beverages, if a decree shall be rendered against the state the court costs shall be paid out of the law enforcement fund provided for in this article, said payment to be made on warrant of the auditor, upon receipt by the auditor of the bill of costs certified as being correct by the register of the circuit court in which such case shall have been tried, which costs bill should also bear the approval of the attorney general and the governor before warrant shall be drawn."

Answering your second inquiry, I am unable to tell you just how you should proportion the costs actually collected as I am not advised as to all of the items of cost involved.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 20, 1932.

Hon. J. H. Green,
Clerk, Circuit Court,
Decatur, Morgan County, Ala.

The $50.00 reward paid in distilling cases should be included in the costs for which execution is issued and when collected should be paid to the State to be credited to the Prohibition Law Enforcement Fund.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of recent date in which you request my opinion as follows:

"Section 4659 of Criminal Code of 1923, allows the Sheriff $50.00 as a fee for the convictions for manufacturing whiskey which shall be charged in the bill of costs, etc.

"I would like to know if the said fee of $50.00 should be charged by the clerks in the bill of costs against the defendants, and whether execution should be issued against them including the fee of $50.00."

Section 4626 and 4659, Code of Alabama, 1923 has provided that this item of cost shall be charged in the bill of costs, and, as in other felony cases, execution should issue for same along with the other costs, and if collected, should be by the clerk paid to the State to be placed to the credit of the Prohibition Law Enforcement Fund from which all rewards of this character are paid.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 20, 1932.

Hon. G. L. Malone,
Judge of Probate,
Fort Payne, DeKalb Co., Ala.

Commissioners court not required to advertise for bids when purchasing road machinery.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of May 5, 1932 in which you request my opinion as follows:

"Do the Commissioners have the right to buy $10,000 to $15,000 worth of machinery for the county roads without first getting competitive bids and seeing where it can be bought cheapest? What is my duty as Probate Judge, and do I have a right to refuse to sign county warrants when this is done?"

I am unable to find any law which requires the Commissioners Courts of the various counties of the State to advertise for bids before they can purchase road machinery for working or building public roads. Section 1347, Code of Alabama, 1923, confers on such courts extensive power and jurisdiction.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 21, 1932.

Hon. D. F. Green,
Deputy Superintendent of Banks,
CAPITOL.

The provisions of Section 6303 et seq. providing for the liquidation of insolvent banks by the State Superintendent and providing that various Acts should be performed by him with the approval of the Circuit Court or Court of like jurisdiction in effect provide for the administration of the receivership in the Court and hence only one trial tax should be charged unless separate and distinct suits are filed.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of June 13, 1932, in which you state:

"Under Section 6303 et seq. of the Code of Alabama the Superintendent of Banks is the statutory receiver of banks in liquidation, under the direction of the Circuit Court of the County in which the bank is located.

"Under Section 6315 it is the duty of the Superintendent of Banks to file on ex parte petitions, asking the Court to approve contracts he makes with his attorneys and liquidating agents, and it is the practice of the Courts to leave these cases open for such ex parte petitions and decrees as may be necessary from time to time. Under Section 6307 the Superintendent of Banks may make application to the Court for selling real estate and compounding debts due the bank.

"In most of the counties the clerks charge one docketing fee for docketing this case and one trial tax. All other petitions are filed in this case and we do not have to pay a docketing fee or trial tax but one time. However, in several counties the Clerks insist on making separate cases and charging those extra fees, which amount to $4.00 extra cost to the depositors of closed banks, in each case.

"Please give us your opinion as to whether or not it is necessary for clerks to charge these fees every time we file an ex parte petition, under the statute."

By the provisions of Section 6303 et seq. of the Code of 1923 the Superintendent of Banks is made statutory receiver of an insolvent bank.

Montgomery Superintendent vs. Chemical National Bank of New York, 209 Ala. 585.

Section 6307 provides that the Superintendent on application to the Circuit Court may procure order to sell bad or doubtful debts or to sell real and personal property on such terms as the Court shall direct.

By the provisions of Section 6315, the Superintendent must secure the approval of the Circuit Court for payment of compensation of special agents, counsel, etc., authorized by Section 6310.

By Section 6317 the Superintendent may declare and pay a final dividend upon such notice as may be directed by the Circuit Court.

Section 6318 provides for the presentation by the Superintendent to the Court of objections to claims and provides that the Court may make proper provisions for unproven or unclaimed deposits.

Section 6324 provides "that in case of doubtful or conflicting claims he (the Superintendent) may require an order from the court having jurisdiction authorizing and directing the payment thereof."

Section 6320 provides the manner in which the Superintendent shall complete the liquidation of the corporation in such manner and upon such notice as may be directed by the court having jurisdiction of the cause.

I have referred to the various provisions above in order to ascertain if possible the nature of the Court proceedings with which it is necessary for the Superintendent as statutory receiver to comply in order to effect the liquidation of an insolvent bank. It appears from the foregoing that practically every act from the fixing of the amount of the compensation of attorneys to the final completion of the liquidation is under the control and supervision of the Circuit Court or Court of like jurisdiction.

So viewed it appears that the liquidation of a bank closely corresponds to the administration of an estate in equity. It is therefore my opinion that when the Court assumes jurisdiction, it assumes it for all purposes necessary and required by law for the administration of the estate, and hence the various petitions for compounding debts, for the sale of real and personal property and other necessary orders are but a part of the receivership or administration. Hence, in my judgment, there should be but one docketing of the case and one trial tax payable.

Of course if the superintendent as receiver is compelled to file suits to enforce the collection of claims or otherwise, or to defend suits filed against him, such cases would necessarily and properly be docketed separately in the Courts where filed and would require the payment of the trial tax.

Viewed in this light there is nothing conflicting in the foregoing opinion with the opinions rendered under dates of May 7, 1931, and May 26, 1931, to Hon. D. R. Boyd, Deputy Solicitor, Randolph County. These opinions merely decided that the trial tax should be payable in each case that goes on the docket.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 25, 1932.

Hon. J. T. Searcy,
Tax Collector, Barbour County,
Clayton, Alabama.

1. Section 3079, Code of 1923, provides notice to taxpayers by registered mail, return receipt demanded for collection of taxes as provided in said Section.

2. Where non-resident has agent in the County, notice required by Section 243, Acts 1919, page 282, may be served on such agent.

3. If taxpayer is a non-resident of the County such notice should be given by publication unless waived.

4. Non-resident having place of business in County where property is located may be given notice required by Section 243, Acts 1919, page 282, by personal service.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of June 8th in which you ask the following questions:

"1. Is the FI.FA. issued by Probate Judge and sent by registered mail to taxpayer with return card showing that notice was delivered to said party, sufficient notice for Probate Judge to issue a decree for the sale of the property?

"2. If a person lives out of the State and has an agent that looks after his business, gives in the taxes, etc. Is serving notice on agent sufficient notice for Probate Judge to issue a decree for sale of property?

"3. If a person does not live in the County but lives just over the line in another County, and the Tax Collector crosses the line and serves notice on him in person though he is not in the County at the time sufficient notice on said party for decree?

"4. A person lives out of the State and does business in the County in which his property is located. Would serving notice on him in person be sufficient?"

I presume question 1 is based upon the provisions of Section 5079, Code of 1923. This provision is very clear and provision for giving notice by registered mail, return receipt demanded, is specifically provided for.

My answer to your second question is in the affirmative. This is provided for by Section 243, Acts 1919, page 289.

In answer to your third question I advise that unless the person accepts such service and waives the irregularity, notice should be given by publication as provided for by Section 244, Acts 1919, page 282.

My answer to question 4 is in the affirmative. This is also provided for by said Section 243, acts 1919, page 282.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 25, 1932.

Hon. L. C. Sims,
Deputy Sheriff, Shelby County,
Boothton, Alabama.

Ex-soldiers of the World War not exempt from paying road tax or doing road service which is required by law.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of June 9, 1932 in which you request my opinion as follows:

"In warning our parties here to work the roads or pay the regular charge due for road tax, we have been confronted with excuses that ex-soldiers do not have to work roads.

"It has been my understanding that this rule does not apply to road tax, although it may to poll tax. Will you please write me a letter clarifying this matter."

Ex-soldiers are not exempt from road duty or road tax. Only those included in Section 1354, Code of Alabama, 1923, as amended by an Act approved July 23, 1931 (General Acts 1931, page 645) are exempt. These are as follows:

"Persons exempt from Road Duty.—The following persons are exempt from working on the public roads.—All women; all men under twenty-one and over the age of forty-five years; all persons who have lost an arm or leg; all persons who, by nature, accident, disease or the like are rendered incapable of hard labor, who shall procure a certificate of such incapacity from the County Health Officer or County Board of Health, or if there be no such officer or board, then such a certificate from two reputable practicing physicians; all state officers and state employees; all officers and enlisted men in the Alabama National Guard on production of certificate to that effect from his commanding officer or the Adjutant General of Alabama; all officers and employes of hospitals in Alabama; all duly and regularly enrolled students in educational institutions and all teachers thereat who shall procure a certificate from the officer in charge of such institution to that effect."

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 25, 1932.

Hon. Clyde Nix,
Tax Collector, Marion County,
Hamilton, Alabama.

From and after the first day of October of each year the State has a lien upon each and every piece or parcel of property owned by any taxpayer for the payment of all taxes that may be assessed against him, which lien continues until such taxes are paid; and the County has a like lien thereon for the payment of the taxes which may be assessed by it. These liens apply where the assessment or part of the property has become delinquent and is subsequently assessed on information, as well as where the property was duly returned to the Tax Assessor and duly assessed.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of April 7th was duly received. In said letter you make the following statement of facts:

On October 1st, 1929, and on October 1st, 1930, one J. H. Cann owned real estate acreage and also a homestead—all in Marion County. The real estate acreage is about ten miles distant from homestead, consisting of a town house and lot. He has no personal property out of which the taxes can be made. There was a mortgage on the acreage during the tax assessment years beginning October 1st, 1929, and October 1st, 1930. This acreage was sold under the mortgage and is now owned by a party claiming under this mortgage sale.

Said J. H. Cann failed to return for assessment for the tax assessment years beginning October 1st, 1929, and October 1st, 1930, said acreage; and on December 8th, 1930, the Tax Assessor of Marion County assessed this acreage on information.

The taxes assessed for the tax assessment year beginning October 1st, 1929, and for the tax assessment year beginning October 1st, 1930, on the real estate acreage, has not been paid.

Under the facts as above stated, you ask my opinion as to whether or not you are now authorized to take appropriate steps for the sale of this homestead to collect such delinquent taxes.

In reply will say that, presuming the assessments to have been properly made, it is my opinion that you may proceed against either the real estate acreage, or the homestead, or both, if necessary to collect such taxes.

This authority is given by Section 416 of the General Revenue Act, 1919. (Acts 1919, page 449).

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 28, 1932.

Hon. N. P. Tompkins,
Judge of Probate, Colbert County.
Tuscumbia, Alabama.

Where lands lying in this State, having a mortgage thereon in excess of the value of such lands, which mortgage has been duly recorded and the mortgage filing tax has been paid, are conveyed by deed, and the deed offered for record, no filing tax under Section 21½ of Act No. 163, approved July 22nd, 1927, is due thereon.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Receipt of your letter of June 21st, 1932, is acknowledged. You state the following as facts:

On May 20th, 1932, for the recited consideration of ten dollars, the Sheffield Development Company, a Corporation, deeded to the Sheffield Land Company, a Corporation; certain real estate described in said deed, at the date of said deed, there was a mortgage on said real estate in excess of the value of such real estate; which still subsists. This mortgage has been recorded in Colbert County, Alabama, and the mortgage filing tax paid.

You ask my opinion, if, under the facts stated, when the deed, as stated, was offered for record, there was due to be paid a filing tax as provided by Section 21½, of Act No. 163, approved July 22nd, 1927 (Acts 1927, page 163).

In reply will say that, in my opinion, no such tax was due for filing said deed for record. Said Section 21½, after providing for the payment of a filing tax on deeds offered for record, provides: "Provided, that only the value in excess of any mortgages or vendors lien upon any property within this State on which the mortgage tax has been paid, shall be taxable under this Section," etc.

According to your statement of facts, there was no value in excess of the mortgage upon said property. It is the actual value of property conveyed which controls and not the recited consideration in the deed.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 28, 1932.

Hon. J. H. Blake,
Sheriff, Colbert County,
Tuscumbia, Alabama.

No authority of law for paying guard for guarding Probate Judge's office while licenses are being issued to persons engaged in various occupations in the county.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of June 3, 1932 in which you request my opinion as follows:

"Due to the rush in the Probate Office and the large amount of money handled each day through the Probate Office in the beginning of the new license year last fall, the Judge of Probate of this County requested me as sheriff to furnish a guard for his office, and for a few days I placed a deputy on guard in his office. I have filed a bill with the Court of County Commissioners against the county for the services of the guard. The Court of County Commissioners hesitate to allow the claim on the grounds they do not believe they have authority to allow the claim against the county.

"Please kindly advise me whether the Court of County Commissioners can allow this claim against the county."

I find no authority of law for the payment of the claim such as you refer to above. You could have assigned a regular paid deputy to this duty. Before the Commissioners Court can pay any claim or do any act, it must be able to point to some direct statute, or it must be authorized by necessary implication to do the act or perform the service.

Bice, County Treasurer, v. Fisher, 97 So. 764;
Ensley Motor Co., v. O'Rear, 71 So. 704;
Biennial Report of Attorney General 1926-28, p. 217.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 28, 1932.

Hon. Page S. Bunker,
State Forester,
Montgomery, Alabama.

The rights of a purchaser of land, at a tax sale, while lawfully in possession thereof prior to the expiration of the redemption period

and before deed is made by the Judge of Probate is governed by Section 3119 of the 1923 Code of Alabama.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Receipt of your letter of June 18, 1932, is acknowledged. You state the following as facts:

> A person purchases land at a tax sale. He takes possession of such land after the elapse of six months from the date purchase as provided by statute that he may; but before deed is executed.

You ask my opinion:

> Has he legal authority before the two year redemption period has expired and before he gets a deed under such purchase, to chip the pine trees standing on such land for the purpose of turpentining such trees?

In reply will say that, in my opinion, such purchaser has such authority subject to the limitations named in Section 3119 of the Code. "The purchaser at a tax sale obtains a certificate of purchase, but no deed passing title until the end of the redemption period of two years."—Section 266, Revenue Act, 1919 (Acts 1919, page 360); Abates v. Timbes, 214 Ala. 591. "Usually the right of possession follows the legal title. So, in absence of statute, the purchaser at a valid tax sale was not entitled to possession until he obtained his tax deed."—Abates v. Timbes, 214 Ala. 591.

The rights of the purchaser in possession and before deed is properly executed, the sale having been valid, is governed by Section 3119 of the 1923 Code. It will be noticed in this Section of the Code, that such person shall be considered the rightful owner of such land during such period, subject to the limitations expressed in said Section. He is not liable to account to the owner of such land for any rents, issues and profits, "unless such owner, at the time of sale, was a minor, a person of unsound mind, and had no guardian, or his guardian was not lawfully served with notice of the proceedings had in the Court of Probate for the sale of such real estate; in which event, such purchaser or other person in possession shall be liable for rents, issues and profits, as in other cases; provided that neither such purchaser, nor any one claiming under him, shall have the right to cut standing timber from the land so purchased at tax sales, until he shall have received a deed for the land from the Probate Judge, and any one in possession shall have the right to the crops planted by him."

I am, therefore, of the opinion that when such tax sale is valid and the purchaser has lawfully taken possession of such land before the pe-

riod for redemption has expired, and the taxpayer for whose account it was sold was not a minor or person of unsound mind, at the time of the sale, is held and considered the righful owner of such lands and may use it subject to the limitation expressed, to-wit: provided that neither such purchaser nor any one claiming under him shall have the right to cut standing timber from the land so purchased at tax sales, until he shall have received a deed for the land from the Probate Judge," etc.

It is my opinion that such person as last set forth, has the legal authority for chipping the trees for turpentine. Chipping the trees for turpentine does not, in my opinion, constitute cutting standing timber from land. All the rights as owner are given to such person lawfully in possession, prior to the expiration of the period for redemption, except the right just named.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

June 30, 1932.

State Tax Commission,
CAPITOL.

Counties and municipalities held liable for gasoline tax on gasoline bought without the State, stored by them and withdrawn from storage.

Opinion by Assistant Attorney General Moore.

Gentlemen:

I have your letter of May 20th requesting my opinion as to the liability of counties and municipalities for the gasoline tax in cases where they import the gasoline from without the State and withdraw for governmental uses.

This request necessitates a review of the opinion rendered by this office under date of July 23, 1929, (Biennial Report 1928-1930, page 547) and an opinion subsequent thereto based on such opinion.

The question which you present is one involving the intent of the Legislature.

The general rule as to the taxability of governmental subdivisions is stated in City of Huntsville vs. Madison County, 166 Ala. 387:

"Property owned and held by the State and counties for public purposes is generally exempt from taxation of any description and

is not to be deemed subject to taxation in any form unless the intent of the Legislature to render it so clearly appears."

This was a case involving the right of the city to collect paving assessments from the county and it was held that the city had no such power.

The various gasoline Acts contain the following definitions:

"The word 'person' means and includes every person, corporation, co-partnership, agency or association, singular or plural.—The term 'storer' as herein used shall include any person who ships gasoline into this State in tank quantities and stores the same and withdraws or uses the same for any purpose."

Except for the general rule that governmental agencies are not included unless the intent to tax clearly appears, there would be no question but that counties and municipalities are subject to the tax. This general rule is the reason for the opinion of July 23, 1929 (Biennial Report 1928-1930, page 547) which opinion is the authority for all subsequent opinions on this subject. In this opinion Judge Evans says that in his opinion the word "person" does not include counties and municipalities.

Opposed to this are the following decisions of other states:

City of Jackson vs. State ex rel Mitchell, Attorney General 126 So. 2, (Miss.);
Crockett, Secretary of State vs. Salt Lake County and Salt Lake City, 270 Pac. 142, 68 A. L. R. 867;
27 S. W. 2nd, 377 (Ky.);
272 Pac. 629 (Colo.);
217 Pac. 833 (Oregon);
West Palm Beach vs. Amos, 130 So. 710 (Fla.).

In the Utah case the Act defined a retail dealer as follows:

"(d) The term 'retail dealer' is hereby defined as any person, firm or corporation who purchases from a distributor within the state, any motor vehicle fuels in the original packages in which the same was imported, for use, distribution or sale within the state in quantities other than in the original packages; or who imports into the state, motor vehicle fuels in the original packages for use of such person, firm or corporation."

It was contended that there was no express intention to subject counties and cities to the tax. The Court in answer to this contention said:

"It thus appears that the tax is not for the purpose of raising revenue for the payment of the usual and ordinary expenses of state

government, but for the construction and maintenance of public highways. These highways are open, not only for the use of the citizens of the state, but for others traveling within the state and for the counties and cities in the discharge of their public duties. While it is true the statute does not expressly provide that the municipalities of the state shall be subject to the tax, nevertheless there is no provision or language found in the act which indicates the intent of the Legislature to exempt or relieve counties or cities from paying the tax imposed on all who use motor vehicle fuels for vehicles, engines, or machines, movable or immovable, within the state. On the contrary the admitted purpose of the legislation and the directions contained in the act as to the disposition of the funds so raised not only fail to indicate an intention on the part of the legislature not to exempt municipalities from payment of the tax, but negative any inference that such municipalities were intended to be relieved from the payment of the tax.

"The tax levied is by the statute designated an excise tax; that is it is a tax for the privilege of selling motor vehicle fuels and likewise for the use of such fuels when purchased outside of the state and brought within the state for use. It is in no sense a general tax upon the property of the municipality, but is a tax charged against the municipality for the privileges included within the terms of the act and which are made subject to the tax. It does not purport to be a tax against any specific property, real or personal."

It is to be noted that the definition of retail dealer includes the term "storer" as used in the Alabama Statute.

The reasoning in this case applies with peculiar force to Alabama. The proceeds of the various gasoline taxes are for road purposes and not for general revenue purposes. The counties and cities directly benefit from the use of the tax. Moreover in Alabama two-fifths of the total tax collected is distributed directly to the counties to be used in the construction and maintenance of their roads.

In Portland vs. Koser, 108 Oregon 375, 217 Pac. 833, municipalities and counties were held subject to the tax, the Court saying the fact that such bodies were **specifically exempted from license** tags evidenced an intent on the part of the Legislature not to exempt them from the gasoline tax, the proceeds of both taxes going to the roads.

I deem this a strong argument in the present case. The Alabama law exempts counties and municipalities from the payment of the license tag tax by specific exception. The word "person" is used in the license act in a manner similar to its use in the gasoline act. Yet the Legislature specifically exempted counties and municipalities from the operation of the license tag tax. This seems at least to indicate that the Legislature believed the terms person, firm, corporation, etc., broad enough to include counties and municipalities, and hence specifically excepted them.

The case of City of Louisville vs. Cromwell, 27 S. W. (2nd) 377; held the city liable for such taxes. This was decided, however, principally under the terms of the Kentucky Constitution limiting the power of exemption. The general rule that exemptions must be strictly construed was emphasized by the Courts in arriving at its conclusion.

In the Colorado case it was decided that the fact that the Legislature by specific language in later acts included cities and counties in the taxable classes, indicated an intent not to include them in a prior statute in which no mention was made.

Similar decisions have been rendered by the Supreme Court of Mississippi in the case of City of Jackson vs. State, ex rel Mitchell, Attorney General, 126 So. 2, in which it was said:

> "There is no such provision for obtaining credit for the tax paid on gasoline sold by a licensed distributor to any subdivision of the state, and consequently a distributor who has paid the tax on the gasoline acquired by him for resale will protect himself by collecting the tax from any municipality to which he may sell gasoline, and there is no apparent reason why the Legislature should have intended to relieve a municipality from payment of this tax when the gasoline used on its streets is purchased from an unlicensed distributor outside of the state, and at the same time, by the necessary effect of the statute, require the payment of the tax, if the municipality purchases gasoline from a licensed distributor within the state."

Likewise the Supreme Court of Florida in the case of West Palm Beach vs. Amos, 130 So. 710, hold the City liable. Opposed to the holding in these cases is the case of O'Barry, State Treasurer vs. Mecklenburg County, 198 N. C. 357, 151 S. E. 880, in which it was held that the County was not a distributor within the meaning of the North Carolina statute. The Court based its conclusion apparently on the general principle that governmental agencies are not subject to a tax in the absence of specific language making them so, and upon special provisions of the Act which the Court decided negatived such intent.

This is the only case I have found holding that the tax is not collectible from counties. Municipalities were not discussed in this opinion. The case of Commonwealth vs. Pure Oil Company, 154 Atlantic 307 (Pa.) likewise decided that the tax could not be required from the oil company on sales made by it to a municipality. This was under the particular language of the Pennsylvania Act, so in my opinion sheds very little, if any, light on the question.

There is no question as to the State's power if it so desires to tax its instrumentalities. It was stated in City of Ensley v. Simpson, 52 So. 61, as follows:

"Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be intrusted to them. For the purpose of executing these powers properly and efficiently, they are usually given the power to acquire, hold, and manage personal and real property. The number, nature, and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the state. Neither their charter nor any law conferring governmental powers, or vesting in them property to be used for governmental purposes, or authorizing them to hold or manage such property or exempting them from taxation upon it, constitutes a contract with the state within the meaning of the Federal Constitution. The state, therefore, at its pleasure, may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all of these respects the state is supreme, and its legislative body, conforming its action to the State Constitution, may do as it will, unrestrained by any provision of the Constitution of the United States."

The general rule is that exemptions from taxation must be strictly construed. This rule was stated by the Court of Appeals in State vs. Elba Bank & Trust Co., 18 Ala. App. 253, as follows:

"The universal rule of construction is that exemptions from taxation, whether statutory or constitutional, are to be strictly construed against the exemption, and in favor of the right to tax, and no person or property is to be exempted, unless the intention to exempt such person or property clearly appears in some statute or constitutional provision."

We are therefore presented with this question. The general rule that political subdivisions of the State are not taxable except when specifically made so. The opposing rule that exemptions must be clearly expressed. From these two rules we are called upon to construe the various gasoline Acts together with the general law relative to similar taxes for similar purposes. As pointed out heretofore the tax is an excise tax and hence the exemptions of property of such political subdivision found in the Constitution is not applicable. The proceeds of the tax are not for general revenue purposes of the State, but for the construction and maintenance of public roads. These roads are used by the political subdivisions and the tax therefor indirectly inures to their benefit.

Further, two-fifths of the tax is collected by the State and paid directly to the counties. This is a direct benefit of the tax to the counties and argues most strongly that the Legislature intended that all persons,

political or private, using the roads should be subject to the tax. The motor vehicle license tax commonly called the tag tax is for public road purposes just as is the gasoline tax. The word "person" etc., is used in the motor vehicle law in a manner similar to its use in the Gasoline Tax Act. Yet the Legislature specifically exempted counties and municipalities from the payment of the tag tax. This would argue most strongly that the Legislature did not intend to exempt them from the gasoline tax.

The reasoning in the Utah and Oregon cases heretofore quoted appears sound and hence I am of the opinion that in the absence of language specifically exempting or excepting counties and municipalities from the operation of the law they are liable for the tax under the weight of authority as heretofore cited.

This conclusion further leads to a more reasonable administration of the law. Under the present condition if a county or a municipality purchases gasoline from a dealer within the State, it pays the tax as a part of the purchase price, the tax being laid on the dealer. If, however, the county or city purchases its gasoline without the State and withdraws or uses it, it escapes the tax. The effect of this is that the larger municipalities can purchase storage tanks and escape the tax while the smaller ones cannot. It further directly operates against the gasoline dealers who are qualified to do business and who pay taxes in the State of Alabama. Such a result seems unreasonable and I am of the opinion that the Legislature did not so intend.

It is therefore my opinion that in the absence of specific language exempting counties or municipalities they are liable for the tax on the gasoline withdrawn from storage by them. The opinion of July 23, 1929, (Biennial Report 1928-1930, page 547) is therefore overruled, together with the subordinate opinions under dates of February 18, 1932, to Hon. W. L. Pratt, Probate Judge, Bibb County, and March 2, 1932, to Hon. R. L. Jones, Solicitor, Monroe County.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 1, 1932.

Hon. D. W. Crosland,
Judge of Probate, Montgomery County,
Montgomery, Alabama.

Moving picture shows paying license as such and conducting vaudeville liable also for license on vaudeville shows required by Schedule 106 of the Revenue Act of 1919.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of June 7, 1932, in which you inquire as to the liability of the Public-Wilby Theater Corporation for payment of license under Schedule 106, (Acts 1919, page 282, Section 361) for conducting vaudeville or variety shows. You state that the Corporation has paid the license required by Schedule 107 (Acts 1919, page 282, Section 361) for conducting a moving picture show and that it takes the position it is not liable for the vaudeville license. You state that the facts in the case are as follows:

> "The Corporation shows moving pictures and very frequently adds one act of vaudeville along with the picture, charging only admission for the moving picture show. In other words, there is only one admission fee charged for the entire performance."

In reply I beg to advise that this particular question was decided in an opinion rendered to Hon. F. C. Marquis, Member of the State Tax Commission, under date of March 3, 1923. (Biennial Report 1922-24, page 47). This opinion decided under facts similar to yours that there was liability for licensing under both schedules.

This has been the construction of this office since that date. However, by reference to the history of the statute I feel that no other conclusion can be arrived at. Schedule 110, Acts 1915, page 386 at page 525, provides for a license on each person "conducting a theater, moving picture show, vaudeville or variety show, and each person conducting any other exhibition, show, entertainment or performance, to which an admission is charged * * *." This is the identical language of Schedule 106 of the Revenue Act of 1919 except that moving pictures have been omitted from this Schedule and placed in a separate Schedule numbered 107. In my judgment it clearly appears that the Legislature intended separate licenses for the different types of performances and the opinion to F. C. Marquis above referred to is re-affirmed.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 14, 1932.

Hon. Wm. F. Feagin, Director,
State Board of Administration,
CAPITOL.

Power of Inferior Court of Tuscaloosa County and the Inferior Court of Athens to sentence a defendant for non-payment of costs in a case where the Justices of the Peace have jurisdiction.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of April 28, 1932, in which you ask the following questions of this office:

1. Should the State pay the cost bills rendered by these Courts?

2. Where the transcript shows a sentence of the Court, a sentence for fine and a sentence for costs, should the convicted person be required to work out the sentence for fine and the sentence of the court and then released?

3. Is the entire sentence void where there is a sentence for costs included with the sentence for fine and/or a sentence of the Court?

The authority of the courts of this State to sentence for non-payment of costs is given them by Section 5291, Code of Alabama, 1923, which is as follows:

"If, on conviction, judgment is rendered against the accused that he perform hard labor for the county, and if the costs are not presently paid or judgment confessed therefor, as provided by law, then the court may impose additional hard labor for the county for such period not to exceed ten months, as may be sufficient to pay the costs, at the rate of seventy-five cents per day, and the court must determine the time required to work out such costs at that rate; and such convict must be discharged from the sentence against him for costs on the payment thereof, or any balance due thereon, by the hire of such convict, or otherwise; and the certificate of the judge or clerk of the court in which the conviction was had, that the costs, or the residue thereof, after deducting the amount realized from the hire of the convict, have been paid, so that the hire or labor of the convict, as the case may be, amounts to a sum sufficient to pay the costs, shall be sufficient evidence to authorize such discharge."

The provisions or a part thereof of the section above set out were first incorporated into the laws of this State in Section 511 of the Code of 1866 in the following language:

"If, on conviction before the county, circuit, or city court, judgment is rendered against the accused, that he perform hard labor for the county, and if the costs are not presently paid, then the court may impose additional hard labor for the county for State witnesses and the judges fees, allowing not exceeding forty cents per diem for the additional labor imposed."

This was only slightly changed in the Code of 1867, Section 4061, which provided for the defendant's being sentenced for the non-payment

of all costs and officers' fees rather than only for witness and judge's fees as was provided in Section 511 of the Code of 1866.

It will be readily seen that as the law stood at that time the only Courts given authority to sentence for costs were the county, circuit and city courts. The court so held in the case of Ex parte McKevett, 55 Ala. 236.

> "A justice of the peace has no jurisdiction in a criminal case tried before him, to impose a sentence to hard labor as imprisonment on account of the non-payment of the costs, that power being conferred by the statute (Rev. Code 4061, Code of 1867) only on the County, City and Circuit Courts."

This section as it appeared in the Code of 1867 was not changed in the Code of 1876 where it appears as Section 4731. However in the Code of 1886, Section 4504 is an amendment of Section 4731, of the Code of 1876 and is as follows:

> "If, on conviction, judgment is rendered against the accused that he perform hard labor for the county, and if the costs are not presently paid, or judgment confessed therefor, as provided by law, then the court may impose additional hard labor for the county for such period, not to exceed eight months in cases of felony, as may be sufficient to pay the costs, at a rate not less than thirty cents per diem for each day; and such convict may be discharged from the sentence against him for costs on the payment thereof, or any balance due thereon, by the hire of such convict, or otherwise; and the certificate of the judge or clerk of the court in which the conviction was had, that the costs, or the residue thereof, after deducting the amount realized from the hire or labor of the convict, as the case may be, amounts to a sum sufficient to pay the costs, shall be sufficient evidence to authorize such discharge."

In the section last above set out there is no limitation or restriction as to the courts which may impose hard labor for non-payment of costs as had appeared heretofore. It merely states, "the court may impose additional hard labor."

The Supreme Court in the case of State ex rel vs. Judge (in re Long) 6 So. 328, construing the last quoted section held that by omitting the words, "county, circuit and city," and only using the word "court," that the Legislature intended that a justice of the peace or any court having jurisdiction of the cause and the persons had authority to sentence for non-payment of costs. We quote from the opinion of the court in that case.

> "The authority of the justice to impose additional hard labor for the payment of costs is claimed under Section 4504, Code of 1886. The corresponding Section 4731, Code of 1876, reads as follows: 'If,

on conviction before the county, circuit or city court, judgment is rendered against the accused that he perform hard labor for the county, and if the costs are not presently paid, then the court may impose additional hard labor for the county for a term sufficient to cover all costs and officers fees, allowing not exceeding forty cents per diem for the additional labor imposed.' In ex parte McKiveth, 55 Ala. 236, it was held that this statute conferred no authority on a justice of the peace to sentence to hard labor for the county for the payment of costs, the authority being confined to the words of the statute to the county, circuit and city courts. The section was amended by the act of February 26, 1881, by prescribing a limit to the term for which additional hard labor may be imposed, reducing the rate to thirty cents per diem, and adding other provisions not material in this case. The section as amended is incorporated in the Code of 1886 as section 4504, except that the words, 'before the county, circuit or city court', are omitted. The agreement is that by the omission of these words, in view of the judicial construction previously placed upon the statute, the Legislature intended a change and that the effect is to confer on all courts having jurisdiction to try and convict of criminal offenses authority to impose additional hard labor for the county for costs. The general rule is that a material change in the phraseology of a subsequent statute revising a preexisting statute indicates a changed legislative intent. The force of the argument must be admitted; and it may be that it was the intent to extend such authority to all courts having criminal jurisdiction in cases to which the section is applicable."

The only changes made in this section of the 1886 Code in the Codes of 1896 and 1907 were in the length of time which a defendant might be sentenced and the amount of credit he was to receive per diem. Section 7635, Code of 1907 is identical with Section 5291, Code of 1923 which has been heretofore set out.

It thus appears that after the decision of the court in the case of State ex rel vs. Judge, supra, any court, including justices of the peace having jurisdiction has authority to sentence for non-payment of costs unless there is some statutory provision expressly taking away this right.

This power insofar as I am able to determine has only been taken away from justices of the peace. It was first incorporated into the laws of this state as Section 4631, Code of Alabama, 1896, which section is identical with Section 3849, Code of Alabama, 1923.

> "It shall not be lawful for any justice of the peace or notary public, with the powers of a justice of the peace, to sentence any person to hard labor for the non-payment of costs."

The Inferior Court of Athens was created by Act of the Special session of the 1920 Legislature, General and Local Acts 1920, page 171 and was amended by an act of the 1927 Legislature, Local Acts 1927, page 39. However, we are not here particularly concerned with the amendment.

Assuming that the Act is constitutional, the court thereby created, in my opinion, has the authority and power to sentence a defendant to hard labor in case he does not pay the costs or confess judgment therefor, unless this power is expressly taken away from such court.

Section 2 of the Act creating the Court is as follows:

> "Said court and the judge thereof shall have and exercise all the jurisdiction, power and authority and shall perform all the duties that are now or may hereafter be conferred by law on justices of the peace in civil and criminal cases, and such preliminary jurisdiction as is now or may hereafter be conferred by law on justices of the peace, and **in addition, have concurrent jurisdiction with the county court of said county of Limestone of all misdemeanors.**"

In my opinion, this section in going beyond the jurisdiction of Justices of the Peace and granting unto this court concurrent jurisdiction with the county court of all misdemeanors gives to the court the power to carry out its judgment and sentence in the same manner as the circuit court would do which court can, of course, sentence for costs.

It is my opinion, that the word "jurisdiction" as here used means more than mere jurisdiction to hear and determine the case. The section says "concurrent jurisdiction" with the circuit court of all misdemeanors, and in my opinion gives to the Inferior Court of Athens all the powers and authority of the circuit court as regards misdemeanors.

The definition of "jurisdiction" as given by later decisions, includes the element that jurisdiction is not merely the power to hear and determine, but also the power to render the particular judgment which was rendered.

Clapp vs. McCabe, 32 N. Y. S. 425, 430;
Ex parte Reed, 100 U. S. 13;
Crew vs. Pratt, 51 Pac. 38, 119 Cal. 139;
Konald vs. Rio Grande, So. Ry. Co., 51 Pac. 256, 16 Utah 151.

However, even if it could be said that the jurisdiction given to the Inferior Court of Athens concurrent with the Circuit Court of Limestone County covers only the right to hear and determine the cause and not the power and authority to sentence for costs which the said Circuit Court possessed, I am still of the opinion that the said Inferior Court of Athens has the authority to sentence for costs. It is a "court" as that term is used in Section 5291, Code of Alabama, 1923, and unless the power to sentence for costs is expressly taken away from it or its powers limited to that of justices of the peace by the Act creating it, I am of the opinion that it has the same authority to sentence for costs as any other court.

The power to sentence for costs is not a rule of practice and procedure as those terms are used in Section 4 of the Act creating the court.

The court now under consideration was created under Section 168 of the Constitution, I quote from the case of McGehee vs. State, 74 So. 374, which deals with a court in many respects similar to the one under consideration.

> "We held in the recent case of State vs. Roden, 73 So. 657, that where an inferior court is set up in lieu of justices of the peace, that is justices are abolished and their powers and jurisdiction are conferred upon an Inferior Court, the jurisdiction of the Inferior Court in respect of subject matter, like that of Justices of the Peace whom it supersedes, may not be extended to cases of libel, slander, assault and battery, or ejectment, nor to any civil case where the amount in controversy exceeds one hundred dollars; but **it was not decided that in every or any other respect the inferior court must be fashioned in the exact pattern of a justice court.** If it were so intended, no purpose would be served by the alternative of the Constitution which, to state its effect as we understand it, authorizes the consolidation of all the official functions of all the justices of the peace of a number of precincts in an inferior court the civil jurisdiction of which, as to subject matter, shall not exceed the maximum of that jurisdiction which may be conferred upon justices of the peace. It is not to be supposed that the framers of the Constitution intended to speak of justices of the peace and the inferior court as one and the same thing **but rather that they provided for their creation as judicial institutions that might be made to differ except in respect of jurisdiction as to the subject matter of civil causes."**

Section 3849, Code of Alabama, 1923, does not provide that a defendant convicted of those offenses for which a justice of the peace has final jurisdiction cannot be sentenced for costs. It merely restricts the power of justices of the peace in this regard, in other words, it is a limitation upon the officer and does not draw a distinction between offenses. In my opinion, the reason that necessitated the limitation to be placed upon justices was a protection of those brought before them in view of the fact that their only compensation is derived from a conviction. This does not follow in the case of an Inferior Court where the Judge is one learned in the law and who receives a stated salary for his services.

In view of the foregoing discussion, I am of the opinion that the Judge thereof can legally sentence a defendant to hard labor upon the non-payment of costs or a confession of judgment therefor.

This office recently rendered you an opinion holding that the Inferior Court of Tuscaloosa County could not sentence for costs in cases over which the justices of the peace had jurisdiction. I hereby expressly overrule that part of the opinion so rendered.

The Inferior Court of Tuscaloosa County was created under Section 139 of the Constitution and does not abolish justices of the peace. I find nothing in the act creating the Court which deprives the Court of the power to sentence for costs.

I deem it unnecessary to answer the other questions which you asked in view of the position which I have here taken.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 16, 1932.

Hon. H. R. Dudley,
Judge of Probate,
Girard, Russell County, Alabama.

Probate Judges are entitled to pay for making and certifying qualified list of electors for use of managers in each and every election.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of April 11, 1932, in which you request my opinion as follows:

"During the past year I furnished the managers of the election held in 1931 two lists of the qualified electors of each beat in Russell County, and on the 5th day of January, 1932, I furnished the managers with another list of the qualified voters in their respective beats, and when I presented my bill to the Board of Roads and Revenue for 2½ cents per name, and also 2½c for name for clerical assistance or help they refused to pay same. The Attorney for the Board of Roads and Revenue said that I had not complied with the law as I failed to furnish the Secretary of State with a copy of said list of qualified electors certified to.

"Please advise me if I am entitled to the above compensation?"

It is my opinion you are entitled to pay for making list and certifying the name of qualified electors of each precinct in your county for use of managers of elections. I refer you to Section 392 and 402, Code of Alabama, 1923, as amended by an Act approved August 20, 1927, (General Acts 1927, p. 278).

Biennial Report of Attorney General, 1928-1930, p. 642.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 18, 1932.

Mrs. Dixie B. Shealy,
Tax Collector,
Columbiana, Shelby County, Alabama.

Notice to delinquent taxpayers to appear on a certain Monday of a certain month to show cause why a decree of sale of lands should not be made for taxes is jurisdictional and must be strictly followed.

Opinion by Assistant Attorney General Haynes.

Dear Mrs. Shealy:

I have your letter of July 12, 1932, in which you enclose notice issued by the Probate Judge of Shelby County to delinquent taxpayers requiring them to appear on a certain day and show cause why a decree for sale of certain lands should not be made.

You request my opinion:

Is said notice sufficient to base a decree on for the sale of property for taxes?

My attention is called to copy of notice served on the various delinquent taxpayers of Shelby County, which is as follows:

"THE STATE OF ALABAMA, SHELBY COUNTY."

"To.....

"The Tax Collector has filed in my office a list of delinquent tax payers and real estate upon which taxes are due. You are reported as delinquent and the following land (or lots) are reported as assessed to you, to-wit: .....
.....
.....

"This is to notify you to appear before me on Monday, the ..... day of ....., 193....., then and there to show cause why a decree for the sale of said lands (or lots) should not be made for the amount of $....., and charges thereon, due for The State and County taxes and cost.

State and County Taxes $.....

Cost ..... $.....

.....

Probate Judge."

The notice above set out, is invalid and illegal for the reason it does not follow even in a substantial way Section 243, Code of Alabama, 1923, as amended by an Act approved August 4, 1931 (General Acts 1931, p. 812). This Act sets out the form of notice required. Said form of notice is as follows:

> "You are reported as delinquent, and your tax amounts to (here give amount of taxes) with costs added. This is to notify you to appear before the probate court of said county at the next term thereof, commencing on Monday, the ..... day of ....., 19....., then and there to show cause, if any you have, why a decree for the sale of property assessed for taxation as belonging to you, should not be made for the payment of the taxes thereon, and fees and costs. (Here Probate Judge's signature). Judge of Probate."

You will note the notice served, a copy of which is set out above, on delinquent taxpayers of your county, did not require the taxpayer to appear before the Probate Court as is required by law, but it says appear before "me" and is signed by the "Probate Judge" instead of the "Judge of Probate." At first glance we might say the terms are one and the same, but our courts have held that there is a vast difference between the Probate and Judge of Probate. I call your attention to the case of Smith v. Cox, 115 Ala. 503, 508.

It is my opinion, a decree based on the notice copied above, and which was served on the delinquent taxpayers of your county, would be void or at least voidable. The service of a proper notice is jurisdictional and must be strictly followed as to the kind of notice, as to its service and as to the term of court.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 27, 1932.

Hon. W. W. Brandon,
Judge of Probate,
Tuscaloosa, Alabama.

The sale, for the payment of taxes, of real estate assessed to a life tenant thereof, does not, in any way, affect any right, title or interest of the reversioner or remainderman, whether bought in by an individual or the State.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of June 16, 1932, was duly received. You state the following as facts:

In the year 1931, the State of Alabama bought in at tax sale certain real estate that had been assessed to the life tenant thereof. The reversionary interest in such real estate was owned by the children of said life tenant.

You ask my opinion as to whether or not the sale to and purchase by the State of Alabama passed to the State of Alabama any right to the reversionary interest owned by the children.

In reply will say that, in my opinion, such sale to the State did not pass to the State any right as to such reversionary interest.

The real estate was property assessed to the life tenant.—Gunter v. Townsend, 202 Ala. 160.

As to the rights passed to the purchaser by the sale of real estate to pay the taxes of the person to whom it is properly assessed, there is no difference whether the purchaser be an individual or the State.—Sections 260 and 266 of the 1919 Revenue Act, and Section 3123 of the Code.

"A deed from the State Auditor to lands bid in by the State carries no greater right or title than a deed to the individual purchaser at a tax sale."—

Abates v. Timbes, 214 Ala. 591.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 27, 1932.

Hon. Geo. D. Johnston,
Tax Assessor, Tuscaloosa County,
Tuscaloosa, Alabama.

Under authority of State vs. Mortgage Bond Company of New York where property has been assessed and the taxes paid thereon the Tax Assessor cannot afterward make an escape assessment against improvements on such property which were not listed at the time of the original assessment.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of June 21, 1932, in which you state a taxpayer assessed and paid taxes on "a part of a lot" for the tax years 1926, 1927, 1928, 1929 and 1930, but did not assess improvements on said lots.

You inquire if you can make an escape assessment against these improvements. You refer to the case of State vs. Mortgage Bond Company of New York, 140 So. 365. This particular question was there litigated and the Court said:

> "From these authorities it is unquestioned law that a valid assessment, though irregular, and subject to correction through the various agencies set up to secure a fair and full assessment to the end that all taxable property shall bear its share of the public burden, when it becomes final and taxes are paid accordingly, the proceedings are binding on the State as well as upon the property owner, the tax lien is satisfied, the abstractor may so regard it."

> "The property, and not part of it, can be regarded as an escape, or the property be re-assessed as an escape."

This settles your question against the State conclusively unless your statement that a part of the lot was assessed changes the facts upon which the opinion is based. I am not clear as to your meaning but to illustrate —if the east half of Lot A was specifically assessed and no mention was made of the west half, there would have been no assessment as to the west half and the west half including improvements thereon could be assessed as an escape.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 27, 1932.

Hon. Hugh White, President,
Alabama Public Service Commission,
CAPITOL.

Under the Motor Carrier Act of 1931, Public Service Commission is authorized to require application fee of motor carriers who propose to engage in interstate commerce exclusively; under Motor Carrier Act of 1931, Public Service Commission is authorized to hold public hearing in the case of an application of a motor carrier to engage exclusively in interstate commerce.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your letter of July 22nd has been received. Your letter follows:

> "The Commission has received application for approval of a motor freight operation which will be engaged exclusively in the trans-

portation of interstate shipments of freight between points in this State and points in the State of Georgia.

"It has been the practice of the Commission to require an applicant for an interstate operation to pay an application fee in amount as set forth under Section 5 of the Alabama Motor Carrier Act of 1931, in the same manner as though the application was for an intrastate operation. Further, to hold public hearing covering such interstate applications.

"Counsel for the present applicant has expressed doubt as to the legality of the assessment of the application fee, and, further, as to the legality of the requirement of a public hearing in connection with such interstate application. These exceptions are based on the grounds that said Act provides that an applicant for a Certificate of Public Convenience and Necessity shall pay the application fee, and that the Commission shall not issue a certificate until after a public hearing is held and that, in the case of interstate applications, the Commission does not have power to require that a certificate of Public Convenience and Necessity be obtained, and merely issues, in lieu thereof, an approval of the operations.

"Under certain U. S. Supreme Court decisions, the Commission is of the opinion that it does not have power to deny an application for interstate operation only, but may require the applicant to provide proper insurance policies and proper surety bonds and to comply reasonably with the Commission's Rules and Regulations Governing Motor Transportation Companies, insofar as such rules may properly be enforced against one purely an interstate operator.

"The Commission requests your opinion as follows:

"1. Whether or not the Commission shall require payment of an application fee in connection with applications for approval of motor vehicle operations, which are to be carried on exclusively in interstate commerce, and not handling any intrastate business.

"2. Whether or not it is necessary for the Commission to hold public hearings in connection with interstate applications, as described in paragraph next above."

Under Section 5 every application for a Certificate of Convenience and Necessity must be accompanied by an application fee. Is the Commission authorized to require this application fee of a motor carrier who proposes to engage exclusively in interstate commerce? The fact that an operator is engaged exclusively in interstate commerce does not mean that the State, acting through the Public Service Commission, is divested of all authority in the premises. The police power of the State remains intact. The proper use by the State of its police power is not a burden upon interstate commerce. Where Congress has not acted on the subject,

and there is no prohibition on interstate commerce, a state may regulate matters within its police power although incidentally affecting interstate commerce. There can be no doubt of the authority of the State to require transportation companies engaged exclusively in interstate commerce to provide insurance for the protection of persons and property. Neither can there be any doubt about the authority of the State to require a mileage tax of transporation companies engaged exclusively in interstate commerce. But how is the State to know whether a transportation company is doing an intrastate or interstate business? Indeed, how is the State to know that a motor carrier is engaged in the motor transportation business at all, unless the State requires **all** who may desire to engage in the motor transportation business to first apply for a permit from the State? To hold that this requirement, and the payment of the required fee, would be a burden on interstate commerce in the case of an interstate carrier, would be to greatly curtail the police power of the State. There are certain expenses connected with the collection of the mileage tax and there are certain expenses connected with requiring interstate carriers to provide insurance for the protection of property and persons. As indicated above, there can be no doubt of the right of the State in the exercise of its police power to require the insurance and the mileage tax of interstate carriers. The application fee is a reasonable one. I am of the opinion that every carrier who proposes to engage in the motor transportation business in this State, whether intrastate or interstate, must pay the application fee set out in Section 5 of the Act. Moreover, I am of the opinion that your Commission has authority in law to hold public hearings in connection with interstate applications. If the Commission deems it necessary to hold a hearing in connection with the application of a motor carrier to do an interstate business, I am of the opinion that the Commission is authorized in law to hold such a hearing, and to make such reasonable orders as will not constitute a burden on interstate commerce nor conflict with the United States Interstate Commerce Act.

In this connection, I beg to refer you to the following authorities:

Erie Railroad Company vs. Williams, 233 U. S. 685;
Smith vs. Alabama, 124 U. S. 465;
Nashville, Chattanooga & St. Louis Railroad vs. Alabama, 128 U. S. 96;
Chicago, Rock Island & Pacific Railway Co. vs. State of Arkansas, 219 U. S. 453;
Baltimore & Ohio Railroad Company vs. Interstate Commerce Commission, 221 U. S. 612.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 27, 1932.

Alabama Public Service Commission,
Montgomery, Alabama.

Attention Mr. Hamby:

Motor vehicles and transportation companies operating within the corporate limits or police jurisdiction of two or more municipalities, come under the provisions of Section 5 of the Act approved July 19, 1931, and must pay a mileage tax.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of July 1st, 1932, in which you make the following statement of facts:

"A certain bus and transportation company operates a motor bus between Birmingham and Colonial Hills, Homewood and Hollywood, and has been operating under a certificate issued authorizing them to operate for several years; that said certificate has been kept in effect continuously, said bus and transportation company having at all times complied with said Act, and paid the mileage tax on the operation; that recently several other individuals have started operating automobiles for hire over the same route and are not complying with the Act which regulates said operation and requires a mileage tax, claiming that while they are operating within the corporate limits of two or more towns, they do not have to pay a mileage tax as is being paid now by the bus and transportation company referred to above."

You request my opinion:

Do automobiles or bus transportation companies operating within the corporate limits or police jurisdiction of two or more towns where the corporate limits of said towns join, pay license or operating tax, or do they come under the provisions of Section 5 of the Act approved July 19, 1931, known as the Alabama Motor Carrier Act, and are required to pay a mileage tax.

I am, from your statement of facts, of the opinion that busses, automobiles or other motor vehicles operating for hire between Birmingham, Colonial Hills, Homewood and Hollywood, which are operated for the transportation of passengers only, come under Section 5 of the Act approved July 19, 1931 (General Acts 1931, pp. 303, 324) and are subject to a mileage tax. That part of Section 1, which is as follows, does not apply here:

"Provided, however, that this Act shall not apply to motor vehicles engaged exclusively in transporting solely within the limits of any

City, town or village in this State or within the police jurisdiction thereof. 'Fixed Termini', or 'regular routes', as used herein or in any certificate issued hereunder shall mean the termini between which or route over which such motor transportation company shall usually or ordinarily operate, though departures from such termini or route may be periodical or irregular."

The bus lines and other motor vehicles, which you refer to above, do not operate within the corporate limits or police jurisdiction of a single town or city, but, according to your statement of facts, are operated within the corporate limits or police jurisdiction or two or more municipalities which it is true join, but this could make no difference as the above section says: ". . . transporting solely within the limits of any city, town or village in this State, or within the police jurisdiction thereof." I do not think that the provisions of Section 53 of the Act, supra, has any application here as it has to do with transportation of freight or property and has no reference to passenger service.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 29, 1932.

Hon. James J. Lee,
Tax Assessor Conecuh County,
Evergreen, Alabama.

Chief Clerk in the office of the Judge of Probate of any county is not authorized under any condition to act as ex officio judge of the county court.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of July 2, 1932, in which you request my opinion as follows:

"Please render opinion on the following question: In case of vacancy by death of Probate Judge, and office being held by chief clerk until successor is appointed and qualified, would said acting Probate Judge be entitled to salary provided by law for ex officio Judge of the County Court, I having held this office from August 1st to 15th, 1931, after the death of the late Judge S. P. Dunn and until Judge L. W. Price was appointed and qualified."

Under Section 9594, Code of Alabama, 1923, you, as chief clerk in the probate office, are not authorized to act as ex officio Judge of the County Court under any condition. You are only authorized to keep the office open when the same becomes vacant for any cause, and you are only authorized to perform the duties conferred by statute on the chief clerk of such office, and these are the duties you were authorized to perform before the office became vacant. You could not act as Judge of the County Court which jurisdiction is conferred on the Probate Judge by special statute. See Section 3801, Code of Alabama, 1923. This section confers the power on the Judge of Probate to act as ex officio judge of the county court and does not confer this power on his chief clerk under any conditions.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 29, 1932.

Professor J. F. Hodges,
County Superintendent of Education,
Scottsboro, Jackson County, Alabama.

County Courts of Cimmissioners are authorized to appropriate money for such vocational schools as are described by Section 411 of the School Code of Alabama, 1927; a school must be such a school as is described by Section 411; County Boards of Education have authority under Section 281 of the School Code of 1927, to pledge district three mill tax for payment of interest bearing warrants issued as purchase price of district school property.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I beg to acknowledge receipt of your several letters of recent date, relating to the purchase of four buildings and fifteen acres of land, which property the County Board of Education, in connection with the school trustees, proposes to use for school purposes in the Bridgeport school district in Jackson County. All four of the buildings are fully equipped and steam heated. Your County Board of Education proposes to pay a consideration of $5,000.00 for this property, $1,000.00 cash and the balance to be paid over a period of years. The property is to be deeded to the State of Alabama.

The County Board of Commissioners of Jackson County proposes to donate or appropriate the sum of $1,500.00, $1,000.00 or which would be used as part payment on the property and the balance of $500.00 would be used in paying for certain repairs to one of the buildings.

The land and buildings are located in the School district in which the Town of Bridgeport is located, and the property is to be used as school property of the said school district. The school is not to be a county high school.

You state that the $1,500.00 donated by the County Board of Commissioners was made because it is contemplated that certain vocational work is to be carried on in the said school.

You propound two questions:

1. Can your County Board of Commissioners legally make the donation of $1,500.00 for the purpose stated above?

2. Can your County Board of Education legally issue interest bearing warrants, payable over a period of years, and at the same time pledge your special three mill district tax for the payment of the said warrants?

In answer to your first question, it is my opinion that your County Court of Commissioners has authority in law to make the donation of $1,500.00 provided such donation or appropriation is to be used for such a vocational school as is described by Section 411, p. 147 of the School Code of Alabama of 1927. Section 411 provides:

"411. County and City may make appropriation for Smith-Hughes Type of Vocational Training.—Boards of Revenue and Courts of County Commissioners of Counties of Alabama are hereby authorized to make appropriations to County Boards of Education to be used in providing classrooms, laboratories, and shops for use in teaching vocational subjects, and for maintaining such vocational departments after they have been established; provided that such appropriations may only be made for use in any school or schools duly recognized by the State Board of Education as centers for vocational instruction of the Smith-Hughes type, and on account of which reimbursement is being made or is to be made during the next fiscal school year following the first payment of County funds appropriated for such purposes."

If the school is to be such a vocational school as is described by Section 411, the appropriation made by the Board of County Commissioners to your County Board of Education is perfectly legal. A County Court of Commissioners has authority in law to make certain appropriations to county high schools, but the school in question is not a county high school. The only other authority of county courts of commissioners to appropriate money to schools is found in Section 411. If the school is not to be such a school as is described by Section 411, the Court of County Commissioners would be without authority in law to make such an appropriation.

In answer to your second question, I beg to refer you to Article 13 commencing on page 94 of the School Code of Alabama, 1927, on the subject of "Three Mill County and District School Tax." Especially do I invite your attention to Sections 263 and 281. Section 281 provides:

> "281. Warrants Sold and Tax Pledged for Payment.—In any County which has levied or is levying a special County tax for school purposes, the County Board of Education, in order to erect, repair, enlarge or equip school buildings, or to make other improvements in the school facilities of the County, or to raise money for any of such purposes, may issue and sell school warrants bearing interest at a rate not to exceed six per centum per annum for an amount, including interest, not exceeding the income from said tax levy, estimating such income upon the basis of the assessed value of the taxable property in such County for the preceding tax years, as the annual return for such levy for the period for which such warrants are issued. The Board of Education of any county or of any City having a City Board of Education, in order to erect, repair, enlarge or equip school buildings or to make improvements in the school facilities of any school district under its control in which a district school tax has been or is being levied, or to raise money for any of such purposes, may issue school warrants bearing interest at a rate not to exceed six per centum per annum for an amount, including interest, not to exceed the income from such tax levy, estimating such income upon the basis of the assessed value of the taxable property in such City or school district for the preceding tax year, as the annual return from such levy for the period for which such warrants are issued."

Section 281 furnishes ample authority to your County Board of Education to pledge the three mill tax for the payment of interest bearing warrants issued in payment of the purchase price of the property in question. In doing this, Article 13 mentioned above, should be carefully complied with. I suggest that your County Board employ competent attorneys to advise your Board in the matter of the levy, the notice of election and preparation of interest bearing warrants.

Of course, if you have already levied a tax in your district, a new tax cannot be levied until the present levy expires. If Article 13 is followed carefully, I see no reason why you should have any difficulty in doing exactly what you desire to do.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 29, 1932.

Hon. J. R. Gamble, Chief Clerk,
Automobile and License Department,
State Tax Commission,
CAPITOL.

Trailers and semi-trailers, license required.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of July 2, 1932, in regard to trailers and semi-trailers. You refer to an opinion of this office rendered on Feb. 10, 1932, in which it was held:

> "If, when what is ordinarily termed a semi-trailer is detached from the motor vehicle that pulls it, that motor vehicle in its present condition, without further construction thereon, is incapable of use for carrying a load of commodities such as goods, wares and merchandise of some general or particular description, then it is evident that the vehicle which is denominated a semi-trailer is not a semi-trailer in fact and the motor vehicle denominated a motor truck is not a motor truck in fact, but that the two vehicles together constitute and should be treated as one unit, i. e., a motor truck, subject only to a truck license as a whole which license is computed upon the basis of the load carried."

You ask for a reconsideration of the above quoted excerpt from the cited opinion in view of the recent decision of the Supreme Court in the case of State vs. Hobbie Grocery Co., 142 So. 46.

In the Hobbie case it was the opinion of this office and the Tax Commission that the amount of license that a particular truck should carry was to be computed upon the basis of the load carried and not upon the manufacturer's rated capacity of said truck. However, the Supreme Court was of a different opinion and so held.

That part of the opinion of this office above set out was written with the idea that the load carried was the means by which the amount of license to be carried should be computed. Hence if we were wrong in that respect it follows that we were wrong in our opinion as to what constitutes a semi-trailer or trailer.

Section 17, Acts 1923, is as follows: (Page 284).

> "Trailers: The following registration fee shall be collected for operating trailers to motor vehicles on the highways of this State. For each trailer drawn by a motor vehicle, one half of the license required for the motor vehicle drawing such trailer."

Section 1 of an Act of the Legislature of 1927, page 332 goes somewhat further and provides that a semi-trailer shall also be required to pay such a license.

> "Every vehicle without motive power designed for carrying property, only, wholly, or partially in its own structure and being drawn by a motor vehicle, shall pay a license tax of fifty per cent (50%) of the cost of the license tax of the motor vehicle by which it is drawn. Trailer or trailers for hauling passengers are prohibited by law."

In view of the above provisions and the fact that the Supreme Court in effect held that we were in error in our former opinion the same is hereby expressly overruled, and we hold that a trailer or semi-trailer is liable for the license as provided for in the last quoted section.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 30, 1932.

Hon. George E. Stone,
Treasurer, Mobile County,
Mobile, Alabama.

The excess arising from the sale of any real estate remaining after paying the amount of the decree of sale, and costs and expenses subsequently accruing must be paid as provided by Section 265 of Act No. 328, approved September 15th, 1932.

The purchaser at the sale has no interest in or claim to such excess.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of July 19, 1932, was duly received. You state the following as facts:

> Several years ago, at the sale of lands to pay State and County taxes, some of the land was bid in by an individual for more than the amount due for all taxes, fees and costs. The owners failed to redeem, and now the individual who bought the land wants to get a tax deed from the State, as provided by Sections 266 and 267 of Act No. 328, approved September 15th, 1919. (Acts 1919, page 360).

You ask my opinion as to whether or not the amount which the purchaser paid in excess of the amount due for taxes, fees and costs, and

which is on deposit with you, as Treasurer, can be refunded to the purchaser.

Of course not. The law provides what shall be done with such excess. The purchaser at the tax sale has no interest whatever to such excess. What shall be done with such excess is provided by Section 265 of Act. No. 328, approved September 15th, 1919 (Acts 1919, pages 359, 360).

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

July 30, 1932.

Hon. E. J. Garrison,
Judge of Probate, Clay County,
Ashland, Alabama.

Person selling eye glasses in incorporated towns liable for license provided for by Schedule 12, Acts 1927, page 139.
Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of July 20th with reference to license for selling eye glasses. You call my attention to Schedule 12, Acts 1927, page 193, being Schedule 130 of the 1929 Compilation and also Section 49, Acts 1919, page 292, being Schedule 66 of the 1929 Compilation.

In my opinion the party is liable for license under Schedule 12, Acts 1927, page 139. This being the later Act, supersedes the former Act wherever applicable. The only field of operation left for the 1919 Act is in unincorporated places.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 1, 1932.

Hon. M. C. Brooks, Chairman,
Board of Revenue, Conecuh County,
Evergreen, Alabama.

An Act duly passed by the Legislature and approved is presumed to be constitutional and every intendment is in favor of its validity.—State vs. Stout et al, 117 Ala. 207.

Matters transpiring after the passage and approval of an Act does not affect its validity.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Receipt of your letter of July 15, 1932, is acknowledged. You ask my opinion upon the facts stated in your letter of December 24th, 1931. You stated in your letter of December 24th, 1931:

> Conecuh County has reached and exceeded its constitutional debt limit and there are warrants out for which taxes are pledged. With the depreciation in values I do not see how the County can continue to carry on those things required by law and pay interest on the indebtedness and use any part of the assessment for the health unit.

On this statement of facts you ask my opinion as to whether the Board of Revenue of Conecuh County is required under Local Act No. 255, approved July 12th, 1931 (Local Acts, 1931, page 114) to make the assessment provided for in said Act, when the County has reached and passed its constitutional limit of indebtedness.

In reply will say that every legislative Act is presumed to be constitutional, and every intendment is in favor of its validity—State vs. Street, et al, 117 Ala. 207. There is nothing, in my opinion, in your statement of facts, which makes the Local Act unconstitutional. The Act was passed on the 12th day of July, 1931, while your statement is of facts existing on the 24th day of December, 1931.

While the Constitution of the State of Alabama limits the power of the Legislature to authorize a County to levy a tax for general purposes in any one year on the value of the taxable property therein to one-half of one per cent, it does not directly limit the power of the Legislature in prescribing for what purpose a portion of this one-half of one per cent shall be devoted.—Southern Railway Company vs. St. Clair County, 124 Ala. 491; Frances vs. Southern Ry. Co., 124 Ala. 544. Provided such statute, at the time of passage, does not have the effect of impairing the obligations of contract, existing at such date, by destroying or impairing the remedy for their enforcement, it does not become unconstitutional or invalid by reason of subsequent events.—Constitution of Alabama, Section 95; The State vs. Street, 117 Ala. middle of page 210.

> There can be no law of this State impairing the obligation of contracts by destroying or impairing the remedy for their enforcement. —Section 95, Constitution of the State of Alabama.

The remedies for the enforcement of obligations which exist when the contract was made must be left unimpaired by the Legislature, as to such contracts, or, if they are changed a substantial equivalent must be provided.

Oborn vs. Johnson Wall Paper Co., 99 Ala. 313.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

Aug. 3, 1932.

Mrs. Gertrude P. Calloway,
County Treasurer, Chilton County,
Clanton, Alabama.

Paupers—Commissioners Court may make, under an Act approved August 4, 1931 (General Acts 1931, p. 749) provision for the care of same outside the county almshouse.

Opinion by Assistant Attorney General Haynes.

Dear Madam:

I have your letter of May 21st in which you request my opinion as follows:

"I am enclosing copies of two orders passed by the Commissioners Court of this County on March 7, 1932. Warrants have been issued to the people mentioned in the orders for three consecutive months. It is my understanding that the Court is acting under authority given them by Section 31, page 529, Act. No. 476, of the 1927 Legislature. Please let me know how long I may continue to pay these warrants."

I call your attention to the fact that Section 31 of an Act approved September 9, 1927 (General Acts, 1927, page 521) was amended by an Act approved August 4, 1931 (General Acts 1931, page 749) and you will note by this amendment the powers of Commissioners Courts and Boards of Revenue in matters of this character are very much broader than under the original Act. I am of the opinion the order of which you enclose a copy, is sufficient to authorize the Commissioners Court to draw its warrant for the payment of this claim to the party therein designated and you, as Treasurer, would be authorized to pay the same on presentation.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 3, 1932.

Hon. R. B. Ford,
Sheriff, Randolph County,
Wedowee, Alabama.

Courts are without power to suspend sentence and grant probation for costs. The Clerk should issue subpoenas for all witnesses in State cases whose names are furnished him.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of July 5th, 1932, in which you request my opinion as follows:

"What power has the Court, trying a criminal case, to suspend the sentence and grant probation for costs?

"Can the Clerk of the Inferior Court of Randolph County refuse to issue subpoenas for witnesses for the State, where a case has been set down for trial?"

Answering your first inquiry, this office has held in more than one opinion that any Judge in Alabama trying a criminal case is without authority to suspend sentence for costs.

Answering your second inquiry, it is my opinion that it is the Clerk's duty, where a case has been set down for trial to subpoena the witnesses for the State, whose names are given him. Otherwise, the Clerk could, by his acts, place the State very often in the embarrassing position of having the case called and the witnesses unsubpoenaed.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 3, 1932.

Hon. I. N. Hobson, Clerk,
Circuit Court, Tuscaloosa County,
Tuscaloosa, Alabama.

A de facto officer holding office as such is entitled to the emoluments of said office while so acting.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of July 2nd in which you request my opinion as follows:

"More than one year ago Mr. W. E. Lathram of Beat 16, Tuscaloosa County, the Beat in which the City of Tuscaloosa is located, was appointed by Governor Miller to the position of Justice of the Peace of Beat 16 of this County. It later developed that you in your official capacity so ruled that the said Mr. Lathram was not entitled to hold said office and that the Governor was without authority to make such appointment. Mr. Lathram at once ceased to perform the duties of

this office, but he had acted as such Justice of the Peace for several months before this ruling was made. During this interval a number of warrants were issued by him, returnable to the Circuit Court and the Inferior Court. At the time your ruling was made I had in my possession some fees due Mr. Lathram, and since said ruling was made I have collected other fees for Mr. Lathram in cases where he had issued warrants before your ruling was made. I have held this money and still hold it awaiting a ruling from you on this matter. If you will kindly let me hear from you as to this matter, I will be greatly obliged."

From your statement of facts I think Mr. Lathram was a de facto officer, and while acting as such he would be entitled to the fees growing out of his services as said officer.

Paterson vs. Brenson, 38 Utah, 286;
Waldrop, Clerk vs. Courson, 206 Ala. 189;
Reynolds vs. McWilliams, 49 Ala. 552.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 3, 1932.

Hon. Geo. B. McDonald,
Judge of Probate, Coosa County,
Rockford, Alabama.

1. Judge of any court in this State may suspend sentence and grant probation to defendant as to fine, sentence to hard labor or penitentiary where the sentence does not exceed ten years.

2. He has power to set aside judgment and dispose of any case as he sees fit within thirty days after final judgment but after this time he loses all power and control over same.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of June 20, 1932, in which you request my opinion as follows:

"Please advise if the Judge of the County Court has authority to remit all or a portion of a fine and costs imposed on conviction in the County Court where a confession of judgment for the fine and costs has been entered."

This office has consistently held that the judge of any court is without authority at any time to suspend a sentence for costs. He may, after conviction, suspend a sentence and grant probation for fine, sentence to hard labor or to the pententiary where the sentence does not exceed ten years, and that his power is limited to punishment and does not affect the costs.

However, the judge may on proper motion set aside any judgment if the motion is made within thirty days from the rendition of such judgment or decree, but after this time he loses all control and power over same. See Section 6670, Code of Alabama, 1923, which is as follows:

> 6670. Executions on judgments; new trial must be asked in thirty days.—After the lapse of ten days from the rendition of a judgment or decree, the plaintiff may have execution issued thereon, and after the lapse of thirty days from the date on which a judgment or decree was rendered, the court shall lose all power over it, as completely as if the end of the term has been on that day, unless a motion to set aside the judgment or decree, or grant a new trial has been filed and called to the attention of the court, and an order entered continuing it for hearing to a future day.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 3, 1932.

Hon. F. W. Walker, Chairman,
Democratic Executive Committee,
Seale, Russell County, Alabama.

Election contests—Effect of failure to number ballots, right to demand recount.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of June 21, 1932, relative to whether or not the failure of election managers to number ballots would render said ballots illegal and not to be counted in case of contest in a primary election.

I am of the opinion that ballots are not to be rejected for the failure of election managers to number them.

Montgomery vs. Henry, 144 Ala. 629, 39 So. 507;
Garrett vs. Cunningham, 211 Ala. 430, 100 So. 486;
Campbell vs. Jefferson County, 216 Ala. 351, 113 So. 230.

In the case of Montgomery vs. Henry, supra, it was held that the provisions of the act requiring the ballots to be numbered are not mandatory and the ballots which, due to the inadvertence of the inspectors are left unnumbered, should nevertheless be counted where there is no complaint of fraud or evil practice.

You also inquire as to whether or not a contestant has a right to demand a recount by the committee of all the ballots cast in the election with the right to inspect said ballots pending the contest and before the hearing thereof.

I am of the opinion that your question should be answered in the affirmative. Section 55 of the Primary Election Law of the 1931 (General Acts, 1931, page 73) provides as follows:

> "Section 55. In the hearing of any contest before any committee, or sub-committee, under the provisions of this Act, such committee, through its chairman, or through such other authority as may be designated, shall have authority to summon witnesses to appear before it or before any sub-committee appointed by it, in the hearing of any contest pending before such committee and can require any witness by a subpoena duces tecum to produce any books, papers, poll lists, tally sheets, ballots, certificates or other documents, which it may consider necessary to a rightful determination of the case. Any such witnesses who live more than forty miles from the place where such contest is to be heard or tried at the time he is summoned, shall be furnished the amount of his railroad fare going and coming to attend upon such committee."

> "Section 563. In all contests, ballots may be examined. In all contest of elections before the judge of probate, or the circuit court, the judge presiding is authorized to make an examination of the ballots given or rejected in the election so far as he may deem it necessary to arrive as a correct judgment, and may make and enforce by attachment all necessary orders to obtain possession of the same, and must take all proper orders necessary for the return of the ballots to the proper custody after the same have been examined by him."

It has been held in **Shepherd vs. Sartain**, 185 Ala. 439, that Section 473, Code of Alabama, 1907 (which is now Section 563 Code of Alabama, 1923) the trial judge may examine the ballots before the evidence is all in, and without waiting for the evidence of legality of the ballots shown by the record to be only prima facie illegal.

Section 522, Code of Alabama, 1923, provides as follows:

> "Sec. 522. Primary elections included in general law—All the provisions of this chapter shall apply to all primary elections and all elections by counties or municipalities held in this state except in cases where the provisions hereof are inconsistent or in conflict with the

provisions of law governing special primary, county or municipal elections."

Construing the above in pari materia, I am of the opinion that the committee before whom the contest is brought in the primary election would have the same power as the trial judge in a general election contest in that he may inspect the ballots in accordance with Section 563, Code of Alabama, 1923, above quoted.

I am also of the opinion that the contestant has a right to be present during this procedure.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 3, 1932.

Hon. John Brandon,
State Auditor,
CAPITOL.

Act No. 328, approved September 15th, 1919, entirely revised Act No. 469, approved September 14th, 1915, in regard to licenses and the when and how money paid for licenses might be refunded; and was intended as a substitute for said 1915 Act. Sections 375 and 376 of the 1919 Revenue Act (Acts 1919, page 445) were intended as substitutes for Sections 15 and 16 of said 1915 Act (Acts 1915, pages 531, 532). There is now no law which gives the Auditor authority to refund a proportionate part of a license to one who has taken out and paid for a license to carry on a business and has afterward been prohibited by law from carrying on such business before the time named in the license has expired.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Receipt of your letter of June 10th, 1932, is acknowledged. Your letter had attached to it a certificate of the Probate Judge of Jefferson County, Judge Eugene H. Hawkins. This certificate reads as follows:

"State of Alabama,
Jefferson County.

"I, E. H. Hawkins, Judge of Probate of said County, hereby certify that F. B. and W. T. Johnson, have paid to J. F. Stiles, Judge of Probate, $3,000.00 for State aud County license for Retail Liquor Dealer for the year 1915. License No. 48 issued Jan. 2, 1915.

"Witness my hand and seal of said Court, this 24th day of May, 1932.

(Signed) Eugene H. Hawkins,
Judge of Probate."

You ask my opinion as to whether or not there is a law that gives the State Auditor authority to refund this license money.

In reply will say that Act No. 469, approved September 14th, 1915, revised the subject generally of license taxes and when and how money paid for license taxes might be refunded. The when and how license taxes paid might be refunded was provided by Sections 15 and 16 of this Act, pages 531 and 532, Acts 1915. Section 15 included within its provisions the following:

> "When any person has taken out and paid for a license to carry on any business in this State, and has afterward been prohibited by law from carrying on such business before the time named in the license has expired, such person shall be entitled to have refunded to him such proportionate part of the whole sum for such license as the unexpired term thereof bears to the whole time for which the license was originally granted;" etc.

Section 10 provided how this license money as well as the rest provided for in Section 15, might be refunded.

The said license Act of 1915 was revised generally by Act No. 328, approved September 15th, 1919. By Sections 375 and 376 of said Act (Acts 1919, page 445,) the when and how money paid for license might be refunded to the payer was provided. In this revision of said Sections 15 and 16 of the 1915 license tax by said Sections 375 and 376 of said 1919 Revenue Act, the provision in said Section 15 for refunding for the unexpired term was left out in said Section 375; and said Section 376, while an exact replica of said Section 16 and therefore a reenactment thereof, is confined in its operation to the provisions of Section 375, which left out that provision.

The 1915 License Act, after repealing all laws in conflict therewith, provided: "that all provisions of existing laws relating to taxation and revenue which are not in conflict with this Act are not herewith repealed." Notwithstanding this provision in the 1919 Act, the Supreme Court in the case of State v. Matthews, 200 Ala. 105, held that since the license Act of 1915 revised the subject generally and clearly intentionally left out Subsection 47 of Section 2361 of the 1907 Code of Alabama, while including therein all other subsections of Section 2361, it was clearly the legislative intent not to tax dealers in cotton futures. So, in the matter under consideration, the Revenue Act of 1919, revised the entire license Act of 1918, and added new matters, but left out the part of Section 15 of the 1918 Act, relating to the refunding of the proportionate part of the license paid where the person paying license was afterward prohibited by law

from carrying on the business licensed, and otherwise covering the whole license and refunding of license covered by the 1915 Act. Besides, the 1915 Revenue Act did not have the proviso: "that all provisions of existing laws relating to taxation and revenue which are not in conflict with the provisions of this Act are not hereby repealed." In other words, the clear legislative intent, when not in contravention of some constitutional provision, is the law.

It is true that repeal by implication is not favored; but when a later Act covers the whole subject of an earlier Act and plainly shows that it was intended as a substitute for the former Act, it operates to repeal the former statute relating to such subject matter, even if the former Act is not, in all respects, repugnant to the new Act.—State v. Lamar, 5th Ala. App. 250; Abernathy v. State, 78 Ala. 411; David v. Levy, 110 Ala. 241; Lemoy v. Walker, 68 Ala. 39; Prowell v. Hasty, 142 Ala. 89; Edson v. State, 154 Ala. 50.

Furthermore, the certificate of the Judge of Probate, as furnished, is inadequate, in any event.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 3, 1932.

Hon. G. H. Howard,
Judge of Probate, Elmore County,
Wetumpka, Alabama.

Judges of Probate of the various counties of Alabama are required to furnish managers of the second Democratic Primary Election held June 14, 1932, with qualified list of voters in their respective precincts.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of June 28, 1932, in which you request my opinion as follows:

> Please advise us if the county can legally pay for clerical assistance hired by the Probate Judge to prepare list of voters for the second primary held June 14th, after having paid for preparing a list for the first Primary held in May.

It is my opinion the Judge of Probate is required to furnish qualified list to the managers of elections in each precinct of his connty for the second Democratic Primary held June 14, 1932, under Section 388, Code of Alabama, 1923, which is as follows:

388. List of voters and electors.—The judge of probate shall, from the registration list returned to his office, including those registered prior to January 1, 1903, make correct alphabetical lists of the qualified electors registered by precincts, which lists shall be certified by him officially to be a full and correct copy of the lists of registered electors for each precinct respectively, as the same appears from the returns of the board of registrars on file in his office. One copy of said list for each precinct the judge of probate shall deliver or cause to be delivered to the inspectors in each precinct immediately preceding every election or primary.

I think he may employ clerical help for the purpose of getting out such list under Section 402, Code of Alabama, 1923, which is as follows:

402. Clerical assistants to make inspection list—The judge of probate may employ such assistants and clerical help as may be necessary to complete and properly prepare the list of qualified electors which the judge of probate is required to furnish the election inspectors. Such assistants shall be paid out of the county treasury by warrant drawn by the judge of probate accompanied by the certificates of the person being paid, showing that the amount is due under the provisions of this article; but the entire amount spent for such assistants and clerical help shall not exceed a sum equal to the amount obtained by multiplying the number of names on said list by five cents. The chairman of the board of registrars in all counties having more than one hundred and fifty thousand population according to the last or succeeding federal census, shall assist the judge of probate of said counties in the performance of his duties in all matters pertaining to the registration of voters and election matters, when called upon by said judge of probate for such assistance.
Biennial Report of Attorney General, 1926-28, p. 146.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 3, 1932.

Hon. Sam Drinkard,
Sheriff, Marengo County,
Linden, Alabama.

1. Where party has been sentenced to hard labor for the County to pay fine and costs, execution cannot issue against him for any balance not paid by the State, therefore cannot become a claim against the fine and forfeiture fund.

2. If a criminal case is nol prossed, then the costs in such case is properly chargeable to the fine and forfeiture fund of the County.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of May 27th in which you request my opinion as follows:

1. When a defendant is tried, convicted, and sentenced in the County Court or the Circuit Court for the offense of violating the prohibtion law, is the Sheriff entitled to draw from the Fine and Forfeiture Fund of the County a mileage and seizure fee in such cases where the same is legally charged and would have been paid by the defendant had he not been sentenced to hard labor as punishment for same?

2. Also, is the Sheriff entitled to draw from the Fine and Forfeiture Fund of the County mileage in violation of the prohibition law cases where contraband liquors were seized and the case is nol prossed, or where the State fails to convict?

Answering your first inquiry, I do not think the sheriff could collect any fee out of the defendant after he has been sentenced to hard labor for the County to pay the fine and costs in any case. This office has repeatedly held that you could not issue execution against defendant for any balance that may be due on account of his having been sentenced to pay such costs. In other words he could not require him to pay twice. If he elects to work it out and does so work, he has satisfied all demands against him for costs, although there may be certain items not paid under Section 3667, Code of Alabama, 1923. The law is satisfied. There can be no execution issued against him, therefore no execution could be returned "no property found." This being true under Section 4039, Code of Alabama, 1923, as amended by Acts of 1927, it could not become a charge against the fine and forfeiture fund of your county.

Biennial Report Attorney General, 1924-26, p. 313;
Biennial Report Attorney General, 1926-28, p. 740;
Opinions Attorney General, (Off. Ed.) Bk. 10, pp. 284, 305.

Answering your second inquiry, I am of the opinion where a criminal case has been nol prossed, you would be entitled to your costs against the fine and forfeiture fund of your county, under Section 4039, Code of Alabama, 1923, as amended by an Act approved February 18, 1927, (General Acts 1927, page 45).

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 3, 1932.

Hon. I. N. Hobson,
Clerk, Circuit Court,
Tuscaloosa, Alabama.

1. Clerk is entitled to pay for issuing subpoenas to witnesses when said subpoenas are issued under order of the Court.

2. Sheriff likewise entitled to pay for summoning such witnesses.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of January 21, 1932, in which you state as follows:

"In the Schedule of fees allowed to Clerk of Circuit Court, Section 7278, Code of 1923, there appears among other things the following: 'Issuing subpoenas for each witness—30 cents'."

You request my opinion:

"Is not the Clerk entitled to this fee for issuing alias subpoenas when ordered to do so by the Court, and said order appearing on the minutes of the Court, and is not the Sheriff entitled to pay for serving said subpoenas?"

I think you are entitled to your fee in such cases. You are compelled to follow the orders of the Court and certainly when you do this, you are entitled to the compensation provided for such service. I also am of the opinion the sheriff under these circumstances and conditions would be entitled to pay for the serving of such subpoenas. It is my opinion the order of the Court takes it out of the general rule pertaining to such matters.

I call your attention to an Act of the Legislature approved July 28, 1931, which provides for the clerk resubpoenaing witness in criminal cases where the cause has been continued, also to an Act approved July 30, 1931, which provides for the clerk issuing subpoenas to witnesses to appear before the grand jury. Both of these Acts are found in General Acts of 1931, p. 668. Of course, if the subpoenas to which you refer have been issued subsequent to the passage of these Acts, you, as a matter of course, would be entitled to pay, but what I have said in reference to subpoenaing witnesses where an order has been made by the court requiring such witnesses to be resummoned, would apply to cases under such an order prior to the passage of these Acts.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

Aug. 5, 1932.

Hon. A. L. Hasty,
Judge of Probate, Marengo County,
Linden, Alabama.

(1) Person purchasing pool room already in operation required to make bond and otherwise comply with the Act regulating the operation of pool rooms.

(2) Such person may be credited with the unused portion of the preceding owner's license in taking out a new license.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of June 24th in which you state:

"Beg to refer you to Vol. 2 of the Code of Alabama, 1923, Section 4258, as to surrender of licenses for billiards or pool room.

"I issued on November 2, 1931, state and county license No. 370, to Clay Larimore, to run two pool tables, and he has now surrendered these licenses for a new license to be issued to Patrick Pool Room, which is already running four tables at another location in the town. Mr. Larimore is voluntarily relinquishing personal supervision, management and control of the two table pool room for which his license was issued, and desires a new license for these two tables to be issued to Patrick Pool Room, for the unexpired time of his license. Kindly advise if I may legally do so. And, will it be necessary for the Patrick Pool Rooms to give another bond, as they have already given one bond."

In reply I beg to advise that in my judgment the new owner will have to make bond as provided for because from your letter he will operate two billiard rooms and the Act provides that no license shall be issued to any person to operate any billiard room without compliance with the requirements of the statute. The bond is one of the enumerated requirements.

The new owner is required to take out a new license under the provisions of the Act which are as follows:

"If any licensee hereunder shall voluntarily relinquish personal supervision, management and control of any billiard room, he shall surrender his license to the Probate Judge who may issue a new license to some other person, firm, or corporation to continue said business, under the provisions of this Act, in which event credit shall be given for the unused portion of said surrendered license."

From the foregoing it would appear that the new owner is required to take out the regular license and be credited with the unused portion of the prior owner's license.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 5, 1932.

Hon. E. L. McDonnell, Clerk,
Circuit Court, Lauderdale County,
Florence, Alabama.

Costs and fees of clerks and sheriffs in criminal cases.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of recent date in which you request my opinion as follows:

1. Appealed from County Court to Circuit Court then transferred by the Circuit Court to the Law and Equity Court what fees should a case carry, should it carry Solicitor's fee in County, Circuit and Law and Equity Court—it would in County Court on account of having been tried there then appealed?

2. Would it carry Judge's or trial tax fee in County Court—then trial tax fee in Circuit Court and Law and Equity Court? If not which Court?

3. Should the clerk during the present administration begin paying one-half of the trial tax to the County Depositor and one-half to The State depository and collecting give per cent therefor?

4. In Law and Equity Court should not the solicitor's fee, stenographer's fee and trial tax fee be remitted to the Clerk to be deposited with the County Treasurer?

5. Should present clerk and sheriff charge for issuing and summoning of State's witness during their administration?

6. In a case trial in Circuit Court, then appealed then affirmed, in making cost bill to the State does it include transcript and the two copies of just the original?

7. In hard labor cases where all of the fees are not paid, can the clerk collect from the fine and forfeiture fund the remaining unpaid fees?

Your first request is so involved that I do not exactly understand what you mean; for instance you say case appealed from the County Court to the Circuit Court, then transferred by the Circuit Court to the Law and Equity Court, then later on you say should it carry solicitor's fee in the County, Circuit and Law and Equity Court, it would in County Court on account of having been tried there then appealed. You first say that it is transferred from the Circuit Court to the Law and Equity Court, then you say would it carry a fee in the Law and Equity Court having been tried there. I do not know which statement is correct, whether transferred to the Law and Equity Court or tried in the Law and Equity Court. I am presuming the first statement is correct. It would not carry any solicitor's fee in the Circuit Court if it were not actually tried there but transferred from the Circuit Court to the Law and Equity Court, but it would carry a solicitor's fee in the County Court from which it was appealed, and then in the Law and Equity Court.

Answering your second inquiry, the trial tax could only be charged in the court finally disposing of the case.

Answering your third inquiry, you should be governed in the disposition of the trial tax by the Act approved July 22, 1931 (General Acts 1931, p. 604). The language of this Act is as follows:

> Section 1. That a trial tax of Three Dollars be, and the same hereby is, imposed in each case, civil, criminal and equity, which is now pending and which hereafter goes upon the docked of any circuit court in this State, to be taxed and collected as other costs, and when collected to be paid by the clerk or register of such court as follows: one-half thereof into the general funds of the State Treasury, and the other half into the general funds of the County in which the same is collected and for collecting and remitting such tax, the clerk or register may retain 5% commission thereof.
>
> Section 2. That in all counties in this State where the clerk or register is paid a salary out of the County Treasury that the 5% commission provided for by Section One (1) of this Act shall be collected and retained by such clerk or register and paid into the County Treasury.
>
> Section 3. That all laws and parts of laws in conflict herewith be and are hereby expressly repealed.
>
> Section 4. That this Act shall become effective immediately upon its approval by the Governor.
>
> Approved July 22, 1931.

Answering your fourth inquiry, I call your attention to an Act of the Legislature approved February 18, 1927 (General Acts 1927, page 52) and especially to Section 6 of said Act, which is as follows:

Section 6. The State Board of Administration shall render an accounting, annually as of January 1st of each calendar year, to and with the several counties of the State whose convicts it keeps and uses under the provisions of this Act, and shall pay over to the proper officer of the several counties, to the credit of the Fine and Forfeiture Fund of said counties, all the net earnings of the county convicts from the said counties. "Net earnings," as used herein, shall be held to mean the average earning of each convict, according to his or her classification, less all expenses of cost paid under Section 3667 of said Code, cost of maintenance, guarding, food, clothing, and all other costs and expenses actually incurred by the State Board of Administration, based on general averages according to classification.

You will note that where a defendant is sentenced to hard labor, and the convict is being worked by the State, under the Act, supra, the State only pays the costs enumerated under Section 3667, Code of Alabama, 1923, which is as follows:

3667. Costs of conviction; items to be paid.—Whenever a defendant is convicted, and sentenced to the penitentiary the following items of costs in the case shall be paid out of the convict fund, to the extent and in the manner hereinafter prescribed, to-wit: For issuing each capias or warrant (once), fifty cents; docketing cause, ten cents; issuing each subpoena for state's witnesses, twenty-five cents; each undertaking or recognizance, and entering same, fifty cents; trial, fifty cents; entering judgment, twenty-five cents; final judgment, twenty-five cents; record for supreme court (per hundred words) fifteen cents; making final record (per hundred words) fifteen cents; making transcript and certificate thereof (per hundred words) fifteen cents; entering forfeiture against defendant, fifty cents; sheriff's fees, executing each warrant or writ of arrest, four dollars; approving bond, one dollar, serving each subpoena for state witnesses, fifty cents; for committing prisoners to jail, one dollar; for summoning jury in capital cases, three dollars; state witnesses' fees, which are fixed at seventy-five cents per diem before the grand jury and seventy-five cents per diem before the court of conviction, and five cents per mile for each mile traveled to and from the grand jury and court of conviction, but no witness shall be entitled to fees in more than one case on the same day; cost of committing magistrate and constables or preliminary trial, both together not to exceed five dollars; court stenographer's fee not to exceed three dollars; and when the conviction is secured by a solicitor other than a solicitor who is paid a salary by the State or when the solicitor is paid a salary by the county, such bill of costs shall also include the solicitor's fee, which is now or may be allowed by law.

All you are required to do is to follow this provision as to trial tax and solicitor's fee.

My answer to your fifth inquiry is in the affirmative. See Act of the Legislature approved July 28, 1931 (General Acts 1931, p. 668). Of course, the clerk is entitled to pay for issuing summons to witnesses in all criminal cases, and the sheriff is entitled to pay for serving same at the first setting of the case, and under the Act, supra, he is now entitled to pay for reissuing subpoenas where cases have been continued.

Answering your sixth inquiry, I again call your attention to Section 3667, supra. Just follow this section as to all costs.

Answering your seventh inquiry, my answer is in the negative. This office has repeatedly held that where a defendant is sentenced to hard labor to pay a fine and costs and when he has worked the allotted time to pay the costs, the law is satisfied and you cannot issue execution against him for any balance not paid. Therefore, not being able to issue execution for such costs, there could be no return "no property found". Therefore, such costs could not become a legal charge against the Fine and Forefiture Fund.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 5, 1932.

Hon. Harry K. Martin,
Judge of Probate, Houston County,
Dothan, Alabama.

1. Though no sealed bid was filed by any bank in Houston County on or before the first Monday in December, 1931, to be elected county depository for the calendar year, 1932, still the Court of County Commissioners, acting in good faith, in the exercise of their sound discretion, had authority to contract with a bank of the County to become such depository.

2. Section 317 of the 1923 Code of Alabama, provides that the Board shall require adequate bond of said bank to secure the safety of said deposit, which bond shall be in the sum of fifty thousand dollars, or such other sum as the County Commissioners or Board of Revenue shall fix, having due regard to the safety of the county fund.

3. The statute provides for no other kind of security except the bond to be given. The giving by the bank, elected or designated, or collateral security, in whole or in part, for such fund, is not provided for by the statute. The Court of County Commissioners can consider the adequacy of the bond only. The Court of County Commissioners has no authority other than given them by statute.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of December 8, 1931, was duly received. You make the following statement of facts:

> Prior to December 7th, 1931, you had notified all the banks in Houston County, Alabama, that on December 7th, 1931, the Court of County Commissioners of Houston County would receive bids in accordance with Sections 316 and 317 of the Code of Alabama.
>
> No bids were received, but the Dothan Bank and Trust Co., appeared before the Court and opened negotiations with the Court to be elected, by it, depository for the funds of said County for the calendar year, 1932. The Court of County Commissioners desired a bond by such Bank, as depository, made by a surety company, authorized to do business in the State of Alabama. Such bond the said Bank declined to furnish. It proposed to give its personal bond and as additional security to deposit with the First National Bank of Dothan, to be held by it in trust, as collateral security for the payment of such bond, should the conditions of such bond be broken: twenty-five thousand dollars, face value, of Houston County, thirty year, five per cent, funding bonds, and seventeen thousand, face value, Houston County six per cent refunding warrants.
>
> You ask the opinion of the Attorney General.
>
> 1. Was the contract proposed by the Dothan Bank & Trust Company to the Court of County Commissioners legal, if accepted by the Court of County Commissioners?
>
> 2. Was such bond and deposit of collateral security adequate protection to the funds of Houston County?

In reply to your first question will say that there was no legal requirement that you, or any one else, give notice to the banks of Houston County that the Court of County Commissioners of Houston County would receive bids on December 7th, 1931, for election by the Court of County Commissioners of a depository for Houston County for the coming calendar year. Every one is presumed to have known that Houston County did not have a population exceeding fifty-five thousand according to the last preceding Federal Census. Every person in charge of a bank in Houston County is presumed to have known that his bank, on or prior to the first Monday in December of each yaar had the right to file with the Court of County Commissioners a sealed bid for election as depository of the funds of Houston County for the succeeding calendar year, to be opened and considered by the Court of County Commissioners on the first Monday in December of each year. There is no provision of law for any one to give notice of the fact. So, whether you did, or did not, give notice is immaterial.

When the first Monday of December, 1931, came, and no bank filed, or had filed, a sealed bid, the authority of the Court of County Commissioners to enter into contract for such election still existed, if the Court of County Commissioners could contract with a bank, within the County for handling the County funds, on terms provided in Article 2 of Chapter 17 of the Code of Alabama, acceptable to the Court of County Commissioners. Even though sealed bids had been filed, it would still, in the absence of fraud or abuse of discretion on the part of the Court of County Commissioners, be in the discretion of said Court as to whether or not it would accept any bid made.—Citizens Bank and Security Co. vs. Commissioners Court of DeKalb County, 209 Ala. 646.

As said in the foregoing case, in speaking of the proviso in Section 5 of Act No. 378, approved September 15th, 1915 (Acts 1915, page 348), which proviso is now Section 322 of the Code of Alabama.

> Certainly the language of this proviso leaves the Court of County Commissioners or Board of Revenue a very wide range of discretion. It appears from a reading of the entire act that its purpose was to provide a safe depository for the County funds under the most advantageous circumstances, and to the best interest of the County. Members of the Board of Revenue and Court of County Commissioners are considered the guardians of the interest of the County, and the proviso in Section 5, above quoted, shows that the bids offered must be satisfactory to such Boards or Courts of County Commissioners, leaving the determination thereof to the exercise of their sound discretion. Acting in good faith, in the exercise of their sound discretion, such Boards should have the right to reject any and all bids and so exercising such discretion would not be subject to control by mandamus.

What is said in the above quotation as to the acceptance of a bid, is, in my opinion, equally true as to the acceptance of the bond offered by the bank as complying with Section 317 of the Code. The County depository as provided by said article of the Code is not a County Officer.—Compton vs. Marengo County Bank, 203 Ala. 129. Act No. 478, approved July 23rd, 1931, in no way controls the Court of County Commissioners as to such bond. Said Act applies to the bonds of county officers only, while the depository of a County is not a County officer. Such bond must be made as provided by Section 317, of the Code. The Court of County Commissioners shall require adequate bond of said bank to secure the safety of said deposit which bond shall be in the sum of fifty thousand dollars or such other sum as the County Commissioners shall fix, having due regard to the safety of the County funds. If the Court of County Commissioners desires a bond executed by some surety company, authorized to do business in Alabama, for such depository, then such depository must furnish such bond in order to act as depository for the County; but the Court of County Commissioners may accept bond with security other than such surety company from such depository, if, acting in good faith, it deems the bond adequate for the safety of the County funds. The opin-

ion of June 13th, 1932, to Hon. J. N. Mullins, Circuit Solicitor, holding that such bond must be made in a surety company, is withdrawn.

In answer to your second question will say that, in my opinion, the statute does not contemplate the giving of collateral security instead of a bond, in whole or in part. The bond itself must be adequate for the protection of the County. The whole matter is statutory, and the statute must be complied with. It is needless to consider the adequacy of any security other than the bond offered. The matter of its adequacy is to be decided by the Court of County Commissioners only.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 5, 1932.

Miss Lummie Swindle,
Treasurer of Walker County,
Jasper, Alabama.

Claims of witnesses for attending criminal courts have preference over claims of officers of said courts.

Opinion by Assistant Attorney General Haynes.

Dear Madam:

I have your letter of June 9, 1932, in which you request my opinion as follows:

> Are claims of State witnesses attending criminal courts in Walker County payable or preferred before officers' claims in said courts for services rendered?

Since the case of Jim Daley vs. M. H. Johnson was decided declaring the Local Act of 1907, Local Acts 1907, page 209 (which Act affected Walker County alone) unconstitutional which opinion is now in manuscript, Walker County is placed under the general provisions of Section 4039, as amended by an Act approved February 18, 1927 (General Acts 1927, page 45). This Section as amended regulates the fine and forfeiture fund of the County and under it, it is my opinion State witnesses' claims come first. It other words, witnesses must be paid before the claims of officers can be considered. I refer you to that part of Section 4039 as amended, supra, which is as follows:

> Whenever there shall be a surplus of the fund arising from fine and forfeitures in the County Treasury of any County over and above the sum required to pay the registered claims of State witnesses, the

County Treasurer of such County must pay the fees of officers of the court arising from criminal cases.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

Aug. 6, 1932.

Hon. John Brandon,
State Auditor,
CAPITOL.

Where Probate Judge issues automobile license in conformity with the application of the owner the error or mistake is that of the owner and not such an error of the Probate Judge as to authorize a refund under Section 375, Acts 1919, page 282.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of June 23rd, in which you state:

"This office has several applications for a refund of automobile license in cases where the License Inspector has cited them for not having the proper tag. The original applications made to the Probate Judge shows that they received the kind of tag or license they applied for. The License Inspector cited them and made them take out a higher license, now they want a refund for the license that was first taken out. The Probate Judge certifies that it was his error, although the original application shows that they received the license asked for.

"Can the State Auditor refund the amount of the first license taken out? I am enclosing herewith an application referred to."

In reply I advise in my opinion no refund is allowable under the facts set out in your letter. Your letter shows that the error was on the part of the applicant for license who is now applying for refund rather than an error on the part of the Probate Judge. Section 375, Acts 1919, authorizes a refund when the error or mistake is that of the Probate Judge. I do not think this authorization can be extended to that of an error or mistake on the part of the party applying for license.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 8, 1932.

Mrs. Gertrude P. Calloway,
County Treasurer,
Clanton, Chilton County, Alabama.

Commissioners Courts may, if they see proper, under subsection 18 of Section 6756, Code of Alabama, 1923, expend money for stenographic work for the Farm Demonstration Agent.

Opinion by Assistant Attorney General Haynes.

Dear Madam:

I have your letter of June 14th, 1932, in which you state:

"I am enclosing you an order of the Commissioners Court of Chilton County passed at a recent term, which is as follows:

" 'It being made known to the Court that it is necessary and advisable that C. E. Stapp the Farm Demonstrator of Chilton County is in need of a helper and stenographer, and it further appearing by a claim presented to the Court that said Farm Demonstrator has paid to a helper and stenographer the sum of $25.00 for the month of April and $25.00 for the month of May, it is the order and judgment of the Court that said claim be allowed and that the Judge of Probate be authorized and directed to draw a warrant in favor of C. E. Stapp to repay him for the disbursement made in the sum of $25.00 for each month of April and May, 1932, and that the Judge of Probate be further ordered and directed to draw a warrant in favor of C. E. Stapp for $25.00 per month for such help, pending the further order of this Court.' "

You request my opinion:

Will you please advise me if I would be authorized to pay warrants drawn by the Commissioners Court for the payment of such salary?

It is my opinion that under Section 6755, Code of Alabama, 1923, subdivision 18, the Court of County Commissioners of your County, if they so desire and think it is necessary may expend such sum as they think proper or necessary to pay for stenographic work for the Farm Demonstration Agent. Subsection 18, supra, is as follows:

"18. Where the state or federal authorities have taken up the work of farm demonstration, or the organization of farm life clubs for the promotion of agriculture, to appropriate for aiding in such

work such sum or sums as the county commissioners or board of revenue may deem adequate and necessary."

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 9, 1932.

Hon. W. M. Vaughan,
Judge of Probate,
Selma, Dallas County, Alabama.

The following clause of Section 3110 of the Code of Alabama, 1923, is, in my opinion, constitutional and valid: " * * * including the current tax assessing year, with interest thereon at the rate of eight per cent per annum from the maturity of such taxes, * * *."

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of June 24th was duly received.

You ask my opinion as to the constitutionality of the following clause in Section 3110 of the 1923 Code of Alabama:

"* * * including the current tax assessing year, with interest thereon at the rate of eight per cent per annum from the maturity of such taxes, * * *."

You suggest that it is unconstitutional:

"1st. Because it requires one to pay more than the Constitution prescribes shall be paid in any one year. If it could require him to pay for one year that is not due, nor even assessed, it could require him to pay for any number of years, confiscating his property."

"2nd. "Because it might require him to pay an amount not authorized by law. The valuation of the property might be reduced before October or might be increased."

Section 3110 of 1923 Code of Alabama, a clause of which you challenge its constitutionality, reads as follows:

"3110. Mode and terms of redemption where land sold to state.—In order to obtain the redemption of land from tax sales, where the same has been sold to the state, the party desiring to make such redemption shall deposit with the judge of probate of the county in

which the land is situated the amount of money for which the lands were sold, with interest thereon at the rate of fifteen per cent per annum, from the date of sale, together with the amount of all taxes due on such lands since the date of sale, including the current tax assessing year, with interest thereon at the rate of eight per cent per annum from the maturity of such taxes, and all costs and fees due to officers as set out in the followong section."

You fail to point out what particular provisions of the Constitution you are of the opinion is violated by said clause of Section 3110 of the Code. I presume, however, that you have in mind Sections 214 and 215 of the Constitution of Alabama.

In reply to your first reason for unconstitutionality, will say that, in my opinion said clause in no way contravenes any section of the Constitution. The sections of the Constitution mentioned have reference to the levy of **ad valorem** taxes on property—whether real or personal assessed to individuals or corporations. It has no reference to the terms of redemption of property sold for taxes. What should be done, if taxes duly assessed were not paid, was left entirely with the Legislature. In the case of sale of personal property for taxes, the sale was made final and no redemption allowed. Such sale must be made to some one other than the State.

In the case of the sale of real estate for the payment of taxes, the sale must be made to an individual if one bids enough and pays the bid; otherwise it is bought in by the State.

In the case of the sale of real estate for the payment of taxes, the right to redeem is given by statute; but, in order to redeem, the terms for redemption given by the statute must be followed. The Constitution nowhere limits the Legislature in prescribing such terms. The fact that the statute prescribes the payment of the taxes due on such land since the date of sale, including the current tax assessing year, is immaterial, since it is not taxes in the sense meant by Sections 214 and 215 of the Constitution of the State. There are no taxes assessed against the original owner, since the date of sale, on account of such real estate; but the statute provides a way of estimating what shall be paid in order to redeem such land. The fact that it is called taxes does not make it taxes, in the sense meant by Sections 214 and 215 of the Constitution, against the owner, so as to become a personal liability. It is simply one of the charges provided by statute for redemption of such real estate from tax sale. This matter was left entirely open to the Legislature. No constitutional provision affects it.

In reply to your second reason for invalidity will say that as long as the law remains as it is, such is the law. The manner of assessment of lands sold for the payment of taxes and bid in by the State, and prior to redemption, is provided for by Section 269 of the 1919 Revenue Acts, (Acts 1919, pages 360, 361). This has nothing to do with the assess-

ment to an individual, partnership or corporation, on account of the ownership of property.

In my opinion the said clause of Section 3110 of the 1923 Code of Alabama is valid and constitutional.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 9, 1932.

Mr. C. D. Wadsworth,
Tax Collector,
Prattville, Autauga County, Alabama.

The meaning of the words: "to the extent of one thousand dollars" in subsection (d) of Section 2, of Act No. 172, approved August 22nd, 1923, is one thousand dollars actual value and not assessable value.

Opinion by Assistant Attorney General Evans.

Dear Sir:

In your letter of June 6, 1932, you request my opinion as to the following:

> By subsection (d) of Section 2 of Act No. 172, approved August 22, 1923, it is provided: "All deaf mutes and insane and blind persons, and their property to the extent of one thousand dollars."

You desire my opinion as to whether this means one thousand dollars actual value or one thousand dollars assessed value.

In reply will say that it clearly means one thousand dollars actual value. This provision applies to exemption from taxation. A statute creating an exemption must be strictly construed against the person claiming it.—Brown v. Protective Life Insurance Company, 188 Ala. 166.

There is no distinction in construing other provisions in the same Act of like kind. For instance: "farming tools of the value of one hundred dollars; tools and implements of mechanics to the value of one hundred dollars; and the following property to be selected by the head of each family and not to exceed in the aggregate one hundred and fifty dollars."

Taxation is the rule and exemption from taxation the exception. The law must be strictly construed against one claiming an exemption. In

this case the amount of exemption cannot be enlarged by construing the words "one thousand dollars" to mean assessed value.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 11, 1932.

Mr. J. R. Gamble, Chief Clerk,
Automobile and License Departments,
State Tax Commission,
CAPITOL.

When license to operate an automobile, automobile truck or other motor vehicle is taken out by the owner, the tag placed on such vehicle as evidence of such license cannot thereafter be used on any other motor vehicle.

Such tag may be used by any subsequent owner of such vehicle, during the license tax year for which it was issued, by the new owner and the probate judge complying with the requirements as to notice of transfer and name and address of transferee.

Where tag has been lost or stolen from car, without the knowledge or consent of such transferee, he is entitled to a replacement tag just as in case where the tag is lost by or stolen from the first owner.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of July 27th to hand. You ask my opinion as to the following:

1st. In case an automobile with proper license tag attached, is sold by Chancery Court, who should report change in ownership and sign "Application to Probate Judge for transfer of license on motor vehicle?"

2nd. Suppose a dealer or a finance company should repossess a motor vehicle with license attached and the original purchaser of the license refuses to have tag properly transferred, could the new owner, by gving proof that the motor vehicle was legally reposessed operate the car or transfer the tag to a new purchaser?

3rd. As Section 1 of H. B. 119, supra, provides that "no new or other license need be taken out for the operation of such automobile * * * until the beginning of the next tax year," suppose a dealer or

finance corporation should repossess a motor vehicle and the purchaser of the license removes the tag before delivering the car to the new owner, could the new owner, by giving proof that he is in legal possession of the car, apply for replacement tag and the car be legally operated throughout the license year with such replacement tag?

In reply will say that a reply to your inquiries involves a consideration of Act No. 206, approved May 23rd, 1931, (Acts 1931, pages 257, 258).

By this Act the Legislature clearly intended that where a license to operate an automobile, automobile truck or other motor vehicle has been obtained by an owner, the tag evidencing such license and attached to such vehicle may not be used on any other automobile, automobile truck or motor vehicle; but may remain and be used on the vehicle for which it was purchased by the first or any subsequent owner of such vehicle, for the remainder of such license tax year, no matter who may become the legal owner thereof or how he may become the legal owner—provided that each and every change of ownership of such automobile, automobile truck or motor vehicle and the name and address of the new or successive owners are noted by the probate judge on his record of the license and reported by him to the State Tax Commission.

If the new owner within five days after the transfer properly reports such transfer of title, together with the name and address of the new owner, to the judge of probate who issued the license and the judge of probate notes on his record of the license such facts, and also reports such facts to the State Tax Commission within ten days after such notice, then the new owner is not interrupted in use of such from the date of transfer. But, if the new owner fails for five days after such transfer, to properly notify the probate judge of such transfer, then he cannot legally use such automobile, automobile truck or other motor vehicle, until he does properly give such notice to the probate judge and the probate judge notes such facts on the record of the license, and reports such facts to the State Tax Commission.

If the new owner uses such car with such tag on it, after five days from the time of such transfer, without such facts being properly noted by the judge of probate, and proper notice given to State Tax Commission, he does so in violation of law.

In view of the foregoing observations in regard to the legislative intent in said Act No. 206, in answer to your first question will say that, in my opinion, that when an automobile for which a license has been taken out by the owner, is sold under decree of the Chancery Court, the purchaser at such sale should make the report required to the probate judge.

In answer to your second question will say that, if a dealer or finance company should repossess a motor vehicle for the operation of which the person to whom it had been sold had purchased a license and placed the tag thereon as evidence of such license, in such manner and under such

facts as transferred the ownership of such vehicle to such dealer or finance corporation, then, in my opinion, such dealer or finance company would be authorized to give the notice required to the probate judge so that he could make the proper notation and give proper notice to the State Tax Commission; and, when such notation shall have been made by the probate judge and notice given to the State Tax Commission, operate such vehicle or sell such vehicle to another person, who, in turn, would be authorized to give notice to the probate judge and when properly noted by the probate judge and reported by the probate judge to the State Tax Commission, to operate such vehicle.

In answer to your third question will say that under the facts stated, when the dealer or finance corporation has gained the right to operate such motor vehicle, and the tag has been lost or taken off the car without his or its knowledge or consent, then, upon proper showing, a replacement tag is allowed as in other cases of lost or stolen tags.

The foregoing opinions have been given as carrying out what, on consideration of the whole Act No. 206, I am of opinion was the legislative intent.

Where the Act says "it shall be the duty of the old and new successive owners to report" etc., that, in my opinion, is a mere privilege extended to each in order to enable the new owner to continue to operate said vehicle.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 12, 1932.

Hon. W. S. Garner,
Judge of Probate,
Ozark, Alabama.

Where a bank was depository for a County and suspended business because unable to promptly meet its obligations, and desires to reorganize and reopen its doors, the Court of County Commissioners may enter into an agreement with such bank to set a new date or dates for payment of such deposit, upon consideration of additional security, for the payment of such claim furnished by the bank in addition to what it has given, satisfactory to the Court of County Commissioners.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Yours of date August 8, 1932, came duly to hand. You state as facts:

The Planters and Merchants Bank of Ozark, Alabama, suspended operations August 26th, 1931, not being able promptly to meet its obligations. At the time of suspension said band was County depository of Dale County, and, as such depository, owed Dale County the sum of Thirty-five Thousand Dollars. The surety on the bond of said Bank, as depository of said County, consisted of individual citizens of said County.

The Bank is planning to reorganize and reopen its doors provided a satisfactory arrangement as to payment of this amount due Dale County may be reached with the Court of County Commissioners. This plan of reorganization is to provide for the payment of fifteen per cent of the deposit, cash, on reopening, in addition to five per cent already paid, and the issuing to the County of Dale time certificates for the remaining eighty-five per cent, payable in annual installments—one fifty each year, beginning March 5, 1933.

You wish my opinion as to whether or not the Court of County Commissioners has authority to enter into such an agreement.

In reply will say, that, in my opinion, the Court of County Commissioners has the authority to enter into such an agreement, provided such new agreement is entered into by the Court of County Commissioners in good faith, upon a new and valuable consideration moving to the County, and done with consent and written concurrence of the present sureties on such bond, so as not, in any way to diminish the claim owing the County or the security now existing. If the present security is retained, in my opinion, the Court of County Commissioners, may in consideration of additional security satisfactory to the Court of County Commissioners, given by the bank for the payment of such claim, the Court of County Commissioners may enter such agreement, if, in its judgment, such agreement is beneficial to the County.—New Farley National Bank v. Montgomery County, 203 Ala. 654.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 17, 1932.

Hon. B. F. Burch,
Sheriff, Russell County,
Seale, Alabama.

Costs for removal of prisoners who are awaiting trial for infractions of criminal statutes to the jail of another county for safekeeping, become a part of the costs and cannot be paid until final disposition of the case.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of April 19, 1932, in which you request my opinion as follows:

> "Last year, Dr. Andrews, State Prison Inspector of Alabama, sent me a standing order to carry all of my white prisoners to the Lee County jail at Opelika and not to keep any white prisoners in the Russell County jail at Seale at any time. I have been making out my bill for transporting white prisoners and presenting it to the Board of Roads and Revenue of Russell County each month. The Board is in doubt as whether to pay me for transporting these prisoners before the cases are disposed of or not."

I find under Section 3741, Code of Alabama, 1923, that where a prisoner has been removed for various reasons set out in said sections, that on conviction the expense of such removal shall be taxed as a part of the costs and paid by the defendant as other costs, and in cases of nol pros or withdrawal, such removal bill shall be paid by the county ordering such removal, or in other words by the county from which he is removed. Therefore, it is my opinion these removal bills cannot be paid until the case is finally disposed of.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 17, 1932.

Hon. Bradford Cooper,
County Treasurer,
Hamilton, Marion County, Alabama.

The right or duty of the county treasurer to pay postage for county superintendent, welfare worker and school supervisor.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of July 30, 1932, in which you request my opinion as follows:

> 1. Is it legal for the county treasurer to pay the postage for the school supervisor of the county? I am unable to find any law authorizing me to pay such claim.

2. Is it legal to pay the postage for the county superintendent of education out of the County Treasury?

3. Is it legal to pay the postage for the welfare worker or the attendance officer out of the County Treasury?

In answering all of your inquiries, I call your attention to Section 169, School Code of Alabama, 1923, page 67, which is as follows:

169. Assistants to County Superintendent, Office, Etc.—The county board of education may in its discretion provide upon the nomination of the County Superintendent of Education, at least the following assistants: an elementary school supervisor and a statistical and stenographic clerk. No person shall be eligible for appointment as such supervisor who does not hold a certificate of administration and supervision as required of county superintendents of education. The county board of education may employ additional clerical and professional assistants, including health supervisors, and may reimburse them for all actual traveling expenses necessary in the performance of their official duties. The county superintendent is hereby required to maintain an office at the county seat. The county board of revenue or court of county commissioners shall provide the county superintendent of education and his professional and clerical assistants with ample, convenient and comfortable office quarters. The county board of revenue or court of county commissioners shall also provide necessary furniture, office equipment, stationery, postage, forms, and supplies required by the county superintendent of education and his assistants.

I am enclosing you an opinion of this office rendered January 25, 1929, to the President, County Board of Revenue, Calhoun County, Alabama.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 16, 1932.

Hon. Chas. S. McDowell, Jr.,
Attorney at Law,
Eufaula, Alabama.

Gasoline fund—Used to purchase sewer pipe and culverts for use on public roads of county.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of August 16, 1932, in which you request an opinion of this office as to whether or not it is proper to pay from the gasoline fund for sewer piping or culverts used on the public roads of said county.

The funds derived by the counties from the gasoline tax levy are to be used exclusively for the construction, maintenance and repair of public roads. The 1927 Act limited the use to maintenance and repair, but said Act was amended at the 1931 regular session whereby said fund could be used for construction purposes. The 1931 Act provides that the funds so received by the counties may be used for construction, maintenance and repair of public roads.

Acts, 1927, page 340, Section 9;
Acts, 1931, page 458;
Acts, 1931, page 862.

I am, therefore, of the opinion that the purchase price of sewer piping and culverts to be used for the purpose of repairing, maintaining or constructing a road within the county is a proper charge against the Gasoline Fund. If the articles above mentioned are used on the road at all, the use made of them must come under one of the designated purposes.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 17, 1932.

Hon. I. I. Moses, Chairman,
Board of Roads and Revenue,
Girard, Russell County, Alabama.

Boards of Revenue, Commissioners Courts or other like governing bodies are without authority to furnish electric fans to different county officers.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of July 26, 1932, in which you request my opinion as follows:

Kindly advise me if the Board of Roads and Revenue has the authority to purchase an electric fan or fans for use of the Tax Collector or Tax Assessor.

It is my opinion there is no authority of law for the county to furnish electric fans for the use of the Tax Collector and Tax Assessor of your County. Section 231, Code of Alabama, 1923, governs matters of this character. Before a court of county commissioners or other governing body can do any act or perform any service, it must be able to point to some direct statute, or to a reasonable construction of some statute, authorizing such action.

State vs. Street et al., 23 So. 807;
Biennial Report Attorney General, 1928-30, page 981.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 17, 1932.

Hon. Geo. W. Killough, Chairman,
Board of Registrars, Autauga County,
Prattville, Alabama.

Counties with less than 150,000 population are without authority to call a special session of the board of registrars.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of July 27, 1932, in which you inquire if there is any provision of law empowering the board of registrars to call an extra session of said board for the purpose of registering young men and women who have become of age since the last registration closed.

I find no authority of law for a special session of the board of registrars except in counties which have more than 150,000 population. This provision is under Section 376, Code of Alabama, 1923, as amended by an Act of the Legislature approved August 20, 1927 (General Acts, 1927, p. 274).

Opinions of Attorney General, Book 10, p. 267 (office edition).

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 18, 1932.

Hon. Harry K. Martin,
Judge of Probate, Houston County,
Dothan, Alabama.

Gasoline Fund: Funds received by County after October 1st, 1932, may be used in resurfacing a state road.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of July 26th, 1932, which is as follows:

"Under the Act of 1931, on October 1st, 1932, the one cent gasoline tax now going to the State will be divided equally between the counties of Alabama.

"Please advise me whether or not it will be legal for Houston County to purchase material with the proceeds of that one cent levy to improve or hard surface a State road in Houston County, or, may Houston County, release or agree for its share of said levy to be used in the purchase of material for hard surfacing the State road in Houston County, known as the road from Dothan to Headland? If so, what form of agreement or release should be entered into for Houston County to allow its portion of said levy to be used in a sufficient amount to hard surface that part of said road which lies in Houston County under state supervisor and labor?"

Section 24 of H. B. 1204, Acts of 1931, page 850, is as follows:

"Every distributor, retail dealer or storer of gasoline as herein defined shall pay an excise tax of one cent per gallon in addition to all other excise tax now imposed by law upon the selling, distributing or withdrawing from storage for any use, gasoline as herein defined in this State; said one cent excise tax shall be collected as now provided by law for the collection of gasoline excise tax and when collected, less the expense of collecting, shall be paid into the State Treasury to the credit of the State Highway Department for the purposes set forth in this Act until October 1, 1938, after which time the same when collected shall be paid to the County Treasurer or the depository of the several counties in equal shares for a period of three years, to be used exclusively by said counties in constructing and maintenance of public roads and bridges within the several counties.

The above set out provision differs from Section 9 of an Act approved August 27, 1927, (General Acts, 1927, page 328) in that the word "constructing" is included therein.

The 1931 Act does not limit the use of the funds so received to "County roads" but specifies "public roads." It is therefore my opinion that the County can use such a part of the funds **which it receives** after October 1st, 1932, from this fund to assist in the resurfacing of a public road although that road has been designated a "state highway."

I would also like to call attention to the fact that the Act approved August 27, 1927 (General Acts, 1927) was amended by an Act approved July 15th, 1931, (General Acts, 1931, page 458) whereby the money received by the County can be used in construction as well as maintenance.

In regard to a proposed agreement between Houston County and the State Highway Commission, I refer you to Sections 1507(29) Code of Alabama, 1928 (Michies), Section 27 of the Alabama Highway Code.

> "The State Highway Department may enter into contracts with any of the counties of the State, or with any of the municipalities of this State, as it may with individuals, firm or corporations to do any work in the construction, repair or maintenance of the roads, bridges, or highways in this State."

I also refer you to Section 1897 (25) Code of Alabama, 1928 (Michies), Alabama Highway Code, Section 23, a part of which is as follows:

> "* * * If it deems best, the department may accept appropriations from the county for said work which shall be paid into the State Treasury to the credit of the State Highway Fund, before the work begins."

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 22, 1932.

Hon. Claude Hardy,
Judge of Probate, Escambia County,
Brewton, Alabama.

Commissioners Court—what constitutes quorum and what vote is necessary to pass a matter which is pending before them.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of August 11th, 1932, in which you state:

> "Section 6751 of the Code of 1923, with reference to a quorum of the commissioners' court provides: 'The court may be held by the

judge of probate and two commissioners or with three commissioners without the judge of probate'."

It is my opinion that where a quorum of a commissioners court is present as provided by Section 6751, Code of Alabama, 1923, it only requires a majority of those present to pass on any question and not a majority of the entire court. For instance, if only the judge of probate and two members constitute a quorum, then if the two members vote for a certain measure, it is carried, then, if three members, which constitute a quorum be present and two of those present vote for a measure, it is carried.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 22, 1932.

Hon. J. H. Hard, Jr.,
Chief Examiner of Accounts,
CAPITOL.

Fees of Tax Collector in sale of real property for taxes.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of August 4th in which you state:

"Please refer to Code Section 3052 and Acts of Legislature 1919, page 282, Section 264, found in Revenue Laws of Alabama, 1929, page 135, Section 205 on page 166, and Section 273, and advise the fees belonging to Tax Collector to be taxed in cost bill in proceedings to sell land for the payment of taxes:

"1. Where notice has been served on taxpayer and he pays taxes prior to decree of sale.

"2. Where decree has been entered and lands ordered sold.

"It is being contended by some Tax Collectors that they are entitled to $1.25 in the first instance and $2.25 in the second.

"It being a matter of question as to the rightful fees to be charged, submission thereof is made to you for determination. Your immediate attention to this request will be a favor to this Department in expediting examinations now in progress."

In reply I beg to advise that the fees are specifically provided in the two Sections to which you refer.

Section 3052 of the Code of 1923 provides that the Tax Collector shall receive the following fees:

For making demand	$ .50
For making levy on personal property	1.00
Total	$1.50

This applies to sale of personal property.

As to real property the following are the fees set out:

Section 3052.	
For making demand	$ .50
For making levy	.50
Section 264, Acts 1919.	
For serving notice	.25
Total	$1.25

These are apparently all the fees to which the Tax Collector is entitled. In addition, it is provided by Section 264 that the Probate Judge is entitled to a fee of fifty cents for each notice to the delinquent landowner and fifty cents for each decree. All of these fees are to be taxed in the cost bill.

Therefore in answer to your specific questions, the Tax Collector is entitled to $1.25 where notice has been served and payment is made prior to decree. Where the decree has been entered, the Tax Collector is entitled to $1.25 and the Probate Judge is entitled to $1.00. Of course, the Tax Collector is entitled to only one demand fee from each taxpayer.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 25, 1932.

Hon. H. L. Burt,
Collector of County Road Tax,
Russell County,
Pittsview, Alabama.

1. Person employed by the State Highway Department to work on State Highways, exempts such person, during the term of such employment, from working on the public road.

2. Persons exempt from working on the public roads are not required to pay money in lieu of working on the public roads.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of date May 30th, 1932, was duly received. You state that you are collecting public road taxes for Russell County, and you desire my opinion as to whether or not boys or men employed by the State Highway Department to work on the state highways are exempt.

In reply will say that the question asked is now governed by Act No. 544, approved July 23rd, 1931. This Act reads as follows:

"* * * The following persons are exempt from working on the public roads.—All women; all men under twenty-one and over the age of forty-five years; all persons who have lost an arm or leg; all persons who, by nature, accident, disease or the like are rendered incapable of hard labor, who shall procure a certificate of such incapacity from the County Health Officer or County Board of Health, or if there be no such officer or board, then such a certificate from two reputable practicing physicians; all state officers and state employees; all officers and enlisted men in the Alabama National Guard on production of certificates to that effect from his commanding officer or the Adjutant General of Alabama; all officers and employes of hospitals in Alabama; all duly and regularly enrolled students in educational institutions and all teachers thereat who shall procure a certificate from the officer in charge of such institution to that effect."

It is my opinion that a person employed by the Highway Department to work on a State highway is a State employe, and, therefore, exempt.

Persons exempt from working on the public roads are not required to pay a road tax in lieu of working on the public roads.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 29, 1932.

State Tax Commision,
CAPITOL.

Attention: Mr. J. R. Gamble.

Under facts set out amusement park held to be amusement park and liable for license provided for by Schedule 5, Section 361, Acts 1919, p. 282.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of August 2nd in which you state as follows:

"Our license inspector of Autauga County states that there is within five miles of the incorporated town of Prattville an enclosed park in which there is a large spring and the grounds are improved and arranged for the use and convenience of picnic parties and others who wish to use the park. An admission fee is charged to all who enter the park.

"Is the owner, in your opinion, liable for license under Schedule 5, Section 361, page 282, Acts 1916?

In my opinion the park, such as you describe, would be termed an amusement park and if admission is charged would be liable for the license provided in Schedule 5, Section 361, Acts 1919, p. 282.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 30, 1932.

Hon. J. M. Money,
Judge of Probate,
Scottsboro, Jackson County, Alabama.

1. The sale of land by the Tax Collector under Section 377 of the 1929 Compilation of Taxes, is not a sale to pay taxes and where the same lands are subsequently sold for taxes which had accrued before the first sale by the tax collector under the lien acquired by him, the expenses of the first sale cannot be charged in the redemption under the second.

2. The State and County are in no way interested in such first sale nor in any way liable for the costs of such first sale.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Receipt of your letter of July 15th to hand.

You state the following as facts:

"On the 15th day of February, 1932, Miss Leola Matthews, Ex Tax Collector, sold for taxes under Section 377, Compilation of Reve-

nue Laws, 1929, certain lands belonging to the Jackson Coal and Coke Company, which were purchased at said sale by J. C. Jacobs. Above sale 1930 taxes.

"On July 8th, 1932, the same lands were sold again for 1931 taxes under assessment to Jackson Coal & Coke Company and bought in by the State."

On the above statement of facts, you ask my opinion:

If the Jackson Coal Company comes in to redeem under this second sale of July 8th, 1932, have you the right to go back and charge the expenses of the first sale in the redemption.

In reply will say that you have probably gotten a misapprehension of the facts. If the lands were sold under Section 377 of the Compiled Revenue Laws, 1929, they were not sold for the payment of taxes. Section 377 of the Compiled Revenue Laws, 1929, is a copy of Section 412 of the General Revenue Act, 1919. This section simply gives the tax collector a lien on the lands of the taxpayer, when he or she has failed to collect taxes, and the amount due for taxes is charged against the collector on settlement with State and County. The State has no interest in the foreclosure of this lien. The tax collector, in order to get this lien had paid the State and County the amount due each of them for taxes by the taxpayer. The State and County had no further claim against the taxpayer when the tax collector had settled with the State and County.

That, I understand, was for the taxes due October 1st, 1930. On October 1st, 1930, when the next tax assessment year began, the taxes were properly assessed against the Jackson Coal & Coke Company. After these taxes became delinquent and the tax collector could not make the taxes out of the personal property of the Jackson Coal & Coke Company, the tax collector properly reported this fact to the probate court and got an order of sale and sold it. There being no other sufficient bid for the land, the State bought it in. In the first sale the State and County had no interest in the proceeds of sale or liability for the costs. All of that should have been paid out of the proceeds of the sale to Jacobs. The first sale had nothing to do with the second sale where the State bought in the land, and nothing to do with the redemption from the State. The State got a perfect right to the land, if the Jackson Coal & Coke Company owned the land on October 1st, 1930, or at any time during the tax assessment year beginning October 1st, 1930.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 30, 1932.

Hon. H. W. Owens,
Judge of Probate, Henry County,
Abbeville, Alabama.

1. Money appropriated to any County after October 1st, 1932, from the one cent gasoline tax levied by Act No. 743, approved July 27, 1931, may be expended by the Court of County Commissioners for constructing or repairing that part of a State trunk road in such County under agreement with the State Highway Department.

2. There is no provision of law for the Court of County Commissioners pledging such tax in advance of its payment to the County Treasurer.

Opinion by Assistant Attorney General Evans.

Dear Sir:

In your letter of July 23rd, 1932, you make the following interrogatories for my opinion thereon:

1. Will the Commissioners Court and other similar organizations be authorized to expend, in their respective counties, on State Highways under agreement with the State and/or Federal authorities, the one cent gasoline excise tax levied by Act. No. 743, approved July 27th, 1931, that will be available to counties beginning October 1st, 1932?

2. If the above is permissible, are such bodies authorized to, prior to October 1st, 1932, enter into such agreements for improving or constructing such highways and pledge for payment of the counties' part under such agreement, said tax in advance and in anticipation of its receipt?

In reply will say that I presume you have reference to construction or repair of part of a State trunk road in your County.

If I am correct in this presumption, will say that, in my opinion, such money may be expended by the Court of County Commissioners, under agreement with the State Highway Department, in constructing or repairing that part of a State trunk road lying in such County in the manner provided by Section 23 of the Highway Code of Alabama.

In answer to your second question will say that, in my opinion, neither said Section 23 nor said Act No. 743, nor any other statute authorizes the Court of County Commissioners to pledge such tax in advance of collection. Said Section 23 provides: "If it deems best, the Department may accept appropriations from the County for said work, which shall be paid into the State Treasury to the credit of the State Highway Fund, before the

work begins." Section 2-A of said Act No. 743 provides: "to be used exclusively by said counties in constructing and maintenance of public roads and bridges within the several counties." Section 8 of said Act No. 743 provides: "And said funds shall be used by the several counties of the State exclusively for the construction and maintenance and policing of the public roads in the respective counties."

I find no authority for pledging such tax in advance of collection; but only of using it when paid to the County Treasury or Depository.

As to Federal aid for any road project that will have to be arranged for by the Highway Department.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 30, 1932.

Hon. S. McConnico,
Judge of Probate,
Camden, Wilcox County, Alabama.

Construction of Section 224 of the Constitution of Alabama of 1901.

Opinion by Assistant Attoreny General Carmichael.

Dear Sir:

Your letter of recent date has been received. Your letter follows:

Please render us opinion on the following questions:

I quote from State Examiner, Mr. Coker's recent report as follows:

"The actual indebtedness, not including claims on file at the close of the last examination was $292,454.61, and at the close of this period, January 31, 1932, including claims on file, the total is $314,096.03 an increase of $21,641.42. According to Section 234, page 556, Vol. 1, Code of Alabama, 1923, after a county has reached the constitutional debt limit it has not authority to borrow money or contract debts of any kind except that Section 6776, page 404, Vol. 3, Code of Alabama, 1923, gives authority to borrow in anticipation of the collection of taxes for the year, and Section 6777, same Code and page 2 says this amount must not be greater than one half of the income from taxation for the preceding year.

"They make appropriation to Farm Unit, Health Unit and Child Welfare Agent. Refer you to Opinions of the Attorney General, 1926-28, page 402, and 1928-30, page 618, under the last named they may appropriate its tax revenues in anticipation but must reserve enough to pay all debts or obligations made obligatory upon the County, such as interest payments and preferred claims as shown in Section 231, Code of Alabama, 1923. When this is done, it would not leave a sufficient balance to make these appropriations, and they will have to be discontinued."

Also the constitutional debt limit of Wilcox County is $236,716.32.

1st. Must the Commissioners Court act upon the Examiner's report as correctly finding the foregoing facts?

2nd. Upon the facts found by the Examiner must the Commissioners Court discontinue appropriations for Farm Unit, Health Unit and Child Welfare Unit?

3rd. Under the facts found by the examiner would the Probate Judge be liable for the warrants issued for the Farm Unit, Health Unit and Child Welfare Unit?

4th. Under the facts would the County Treasurer be liable for paying warrants issued to Farm Unit, Health Unit and Child Welfare Unit?

5th. Can special road tax and special bridge tax be used for any purpose other than paying obligations for roads and bridges?

Your first question is as follows:

1st. Must the Commissioners Court act upon the Examiner's report as correctly finding the foregoing facts?

In answer to your first question, I beg to refer you to Section 224 of the Constitution of Alabama of 1901. Section 224 provides as follows:

Sec. 224. No county shall become indebted in an amount including present indebtedness, greater than three and one-half per centum of the assessed value of the property therein provided, this limitation shall not affect any existing indebtedness in excess of such three and one-half per centum, which has already been created or authorized by existing law to be created; provided, that any county which has already incurred a debt exceeding three and one-half per centum of the assessed value of the property therein, shall be authorized to incur an indebtedness of one and a half per centum of the assessed value of such property in addition to the debt already existing. Nothing herein contained shall prevent any county from issuing bonds, or other obligations, to fund or refund any indebtedness now existing or authorized by existing laws to be created.

Section 746 of the Code of 1923, relating to examiners, provides:

> 746. Reports of examiners to department.—The examiners shall make sworn reports in triplicate of their findings in state matters to the department within ten days after the completion of the work assigned, and triplicate reports on county work, two to the department, and the other to the judge of the circuit court or court having like jurisdiction who shall in his oral charge call the attention of the grand jury thereto and have the same entered in full upon the minutes of the court. Such reports shall be public records and shall be prima facie evidence of what they charge."

The reports of examiners are prima facie evidence of what these reports charge. But the test is to be found in Section 224 of the Constitution. The report of an examiner is not conclusive. The fact that the report of an examiner is prima facie evidence of what the report charges does not mean that the report is absolutely conclusive as to the correctness of what the report charges or finds. While the Commissioners Court should undoubtedly give great weight to the report of an Examiner of Accounts, yet, the responsibility of complying with Section 224 of the Constitution is the responsibility of the Commissioners Court and the Probate Judge, regardless of what an examiner's report may or may not show. The Probate Judge and the Commissioners Court may rely implicitedly on the report of an examiner if the report of the examiner is correct, but if the report of an examiner shows a given county over its debt limit, and the report is incorrect and should show the reverse, the fact that the report shows the county over the debt limit does not make it true. An application of Section 224 of the Constitution to the facts should reveal whether the county has exceeded its debt limit. An examiner of accounts is most helpful in ascertaining what the facts are. You state in your letter that the total debt amounts to $314,096.03 as of January 31, 1932, and that the limit is $236,716.32. If these figures are correct the county is beyond its debt limit by the sum of $77,379.71. Whether the county has exceeded its debt limit is a mixed question of law and facts. The question of whether Wilcox County has exceeded its debt limit is not ascertained solely by what any person says, but by the law applied to the facts. As indicated, the report of the examiner should be most helpful to the Court in ascertaining the facts, but in ascertaining whether the county has exceeded its debt limit, all the fact should be placed before a competent attorney. An examiner is expert in ascertaining facts, but he does not propose to know the law. My suggestion is that all the facts be ascertained and all the facts be submitted to the attorney for the county or to this office. The Commissioners Court should act upon the law and facts and if the Court is satisfied that the report of the examiner is correct, and that in law and in fact the county has exceeded its debt limit, then the Court would be authorized in acting upon the report of the examiner.

Your second question is as follows:

> 2nd. Upon the facts found by the Examiner must the Commissioners Court discontinue appropriations for Farm Unit, Health Unit and Child Welfare Unit?

Your Commissioners Court has authority to discontinue the county's appropriations to the Farm Unit, the Health Unit and the Child Welfare Unit at any time the Court sees fit to so discontinue these appropriations. This right vests in the Commissioners Court regardless of whether the County has or has not exceeded its debt limit. If the Commissioners Court believes the constitutional debt limit of the county has been reached, it appears that this should serve as a warning to the Court in matters of appropriating the county's money. It would be presumptuous for this office to advise you that the Farm Unit, Health Unit and Child Welfare Unit appropriations should or should not be discontinued, and it would likewise be presumptuous for an Examiner of Accounts or any other officer to direct the Commissioners Court to continue or discontinue any certain county appropriations. This is a matter that addresses itself to the Commissioners Court and not to this office nor to an Examiner of Accounts. If the figures arrived at by the examiner are correct, and if the County has in law and in fact exceeded its debt limit, it would appear that the commissioners court should be reluctant to take any step that would further increase the debts of the county. In any event, the county must take care of and pay certain debts generally referred to as involuntary debts. County debts are roughly divided into two classes, those which are prescribed and imposed by law and are purely involuntary as to the county, and those which are merely authorized by law, and are assumed by the county with some measure of discretion. County appropriations to the Farm Unit, the Health Unit and the Child Welfare Unit fall in the class of debts assumed by the county with some measure of discretion. In this connection, I beg to refer you to the case of Brown, Treasurer, vs. Gay-Padgett Hardware Co., 188 Ala. 423, in which the court says:

> Legitimate county debts or obligations are of two classes: (1) Those which are prescribed and imposed by law, and are purely involuntary as to the county; (2) those which are merely authorized by law, and are assumed by the county with some measure of discretion, at least as to time and amount.
>
> Section 153 of the Code makes a number of specified county obligations preferred claims against the general treasury, and requires the treasurer to set aside sufficient funds for their payment. We think also that, by necessary implication, whenever the assessed revenues of an overburdened county are not sufficient for the payment of all current county obligtaions those involuntary obligations which are fixed and imposed by law must be regarded as preferred claims of a second class, which are entitled to precedence over the general and voluntary obligations of the county.

As a result of the foregoing considerations, we hold that a county which is indebted up to the constitutional limit may nevertheless appropriate its anticipated revenues actually assessed for the payment of its ordinary current obligations incurred during and for the year for which such revenues are assessed and payable; that the obligations absolutely fixed by law are preferred claims; and that all voluntary obligations assumed, or incurred, after the exhaustion of the full amount of revenues on hand or in valid expectancy are debts which are repugnant to the Constitution, and are therefore invalid as to their payment.

If the Commissioners Court is satisfied that the debt limit has been reached, these debts to these three agencies are repugnant to the Constitution, and the Court would be well within its legal rights in discontinuing these appropriations. In matters of this kind it is very easy to be mistaken, unless all the facts are before the person writing the opinion. Perhaps the surest way of ascertaining whether a county has or has not exceeded its debt limit is to try the issue out in court.

Your third question follows:

3rd. Under the facts found by the examiner would the Probate Judge be liable for the warrants issued for the Farm Unit, Health Unit and Child Welfare Unit?

In answer to your third question, if the Commissioners Court is satisfied that the debt limit has been reached the Probate Judge would be under no legal obligation to pay such outstanding warrants. There is no legal obligation upon the probate judge to pay outstanding warrants of this kind at a time when the county has exceeded its debt limit.

Your fourth question follows:

4th. Under the facts would the County Treasurer be liable for paying warrants issued to Farm Unit, Health Unit and Child Welfare Unit?

In answer to your fourth inquiry, I beg to advise you that within my judgment the County Treasurer is under no legal obligation to pay outstanding warrants of this character at a time when the county has exceeded its constitutional debt limit.

Your question five follows:

5th. Can special road tax and special bridge tax be used for any purpose other than paying obligations for roads and bridges?

In answer to your fifth question, I beg to advise you that special road and bridge funds can be used only in the manner set out in the road and bridge fund statutes.

Hagan vs. Commissioners Court of Limestone County, 160 Ala. 544;
Gunters vs. Hackworth, 182 Ala. 205;
Biennial Report Attorney General, 1928-30; pp. 618, 317;
Biennial Report Attorney General, 1926-28, p. 402;
Brown, Treasurer, vs. Gay-Padgett Hardware Company, 188 Ala. 423;
Opinions Attorney General, April 16, 1931, p. 235 (office edition);
Opinions Attorney General, 1928-30, pp. 323, 618, 646, 648;
Opinions Attorney General, 1918-20, pp. 202, 203, 234, 317, 320;
Section 224, Constitution of Alabama; 183 Ala. 423, 427;
182 Ala. 205; 160 Ala. 544; 193 Ala. 275; 203 Ala. 303.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 30, 1932.

Hon. John Brandon,
State Auditor,
CAPITOL.

An officer who has collected money for the State or County must exercise the highest degree of care, vigilance and diligence to prevent loss of such money. Ordinary care and diligence is not sufficient as an excuse for such loss.

Opinion by Assistant Attorney General Evans.

Dear Sir:

In your letter of January 22nd, you state that in his report of licenses and motor vehicle licenses for the month of December, 1931, Hon. G. O. Wallace, Judge of Probate of Barbour County, failed to pay over $90.00 of such taxes collected by him upon the ground that on October 19th, 1931, some one not connected with the office went into his office and stole said money from an iron safe.

On the facts above stated, you ask my opinion as to his liability for such money.

In reply will say that where an officer has collected moneys due the State and County, he is charged with the highest degree of care, vigilance and diligence to prevent loss. Certainly one should not be excused from the payment of such until he shows, by competent evidence, that such care, vigilance and diligence was used by him.

The State vs. Houston, 78 Ala. 585;
Alston vs. State, 92 Ala. 124.

The fact some one entered his office and stole money from an iron safe in his office, in my opinion, falls far short of the mark required by the law. Such a happening, in my opinion, did not show even ordinary care, vigilance or diligence, while the law requires the highest degree of care, vigilance and diligence to prevent such loss.

The question involved is really a jury question at best; but in my opinion the showing so far is entirely inadequate as a legal excuse for such loss. The facts stated indicate the contrary of what the law requires to relieve him and his bondsmen from liability.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

August 31, 1932.

Hon. B. M. Miller,
Governor,
CAPITOL.

Governor's Interest Contingent Fund may be used to pay interest on past due warrants, and expenses of the Legislature are of the class of preferred claims.

Opinion by the Attorney General.

My dear Governor:

I have your letter of August 26th, in which you inquire (1st) whether or not you may pay out of the Governor's Interest Contingent Fund interest on past due state warrants, and (2nd) whether or not the pay of the Legislature becomes one of the preferred claims against the general funds of the State.

I am of the opinion that you have authority to pay from your Governor's Interest Contingent Fund the interest on the warrants which are past due.

In a former opinion of this office to Hon. S. H. Blan, State Treasurer, under date of November 18, 1931, it was held that the ordinary expenses of government including the Executive, Judicial and Legislative branches, were preferred claims on the general funds of the State Treasury. The opinion which I have above referred to was influenced by a realization of the necessity of the Government operating. The Government cannot operate without a legislative or law-making body. I now reiterate that the expenses of the running of the Government are prior claims against the general funds of the State. It is not necessary at this time to consider

whether or not funds other than the general funds could be used if necessary to insure the functioning of the Government.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 2, 1932.

Hon. N. P. Tompkins,
Judge of Probate, Colbert County,
Tuscumbia, Alabama.

Licenses—Trucks operating in pairs.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of July 12th, 1932, which is as follows:

> "I want your opinion in regard to trucks operating in pairs, that is, two motor trucks coupled together. When they are running on level ground or down grade only the first truck is operating under power, the second truck being merely a trailer and when a grade is reached the second truck cutting in and furnishing its part of the power."

I am of the opinion that both trucks require a truck license.

Section 47 of the Highway Code of 1927 defines the various vehicles moving over the highways:

> "Vehicle. Every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks; provided, that for the purposes of this article, a bicycle or a ridden animal shall be deemed a vehicle.
>
> "(b) Motor Vehicle. Every vehicle, as herein defined, which is self-propelled.
>
> "(g) Trailer. Every vehicle without motive power designed for carrying property wholly on its own structure and for being drawn by a motor vehicle.
>
> "(h) Semi-Trailer. Every vehicle of the trailer type so designed and used in conjunction with a motor vehicle that some part of its

own weight and that of its own load rests upon or is carried by another vehicle."

Under the above definitions I do not see how there could be any other decision. The second truck is not a trailer or a semi-trailer within the meaning of the above quoted sections. It is certainly a self-propelled vehicle even though at times it may be assisted by another vehicle.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 8, 1932.

Hon. E. T. Terry, Chairman,
Board of County Commissioners,
Madison County,
Huntsville, Alabama.

Under Section 27 (1327), Acts of 1927, page 356, counties are authorized to enter into contracts with the State Highway Department for the construction, repair or maintenance of the roads, bridges, or highways in this State.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I beg to acknowledge receipt of your letter of August 23, 1932, as follows:

"The State Highway Department is building a road from Huntsville to Scottsboro, Alabama, grading, draining and gravelling, with concrete culverts and bridges. Madison County wants to bid on the contract for building the road between Huntsville to Jackson County to take care of its many unemployed and indigent citizens. Three of our cotton mills are shut down and we have something over 1300 families on the hands of the City, County and the Red Cross, with an average of about five to a family. I am advised that Etowah County has built a State Highway in its County, and that Jefferson County had done the same thing. Madison County is particularly anxious to get this contract at this time to help take care of her unemployed. Is Madison County authorized to do this?"

In my judgment Section 27 (1327), General Acts of 1927, page 356, gives your County Court of Commissioners ample authority to do exactly what you inquire about in your letter. Section 27 (1327) of the Acts of 1927, provides:

"Contracts with counties, municipalities, etc. The State Highway Department may enter into contracts with any of the counties of the State, or with any of the municipalities of this State as it may with individuals, firms or private corporations, to do any work in the construction, repair or maintenance of the roads, bridges or highways in this State."

In my judgment the above Section authorizes your County to enter into such a contract as is mentioned in your letter, with the State Highway Department.

Under Section 27 (1327) your County has the right to enter into a contract with the State Highway Department to do any work, in the construction, repair, or maintenance of the roads, bridges, or highways in this State.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 8, 1932.

Hon. T. F. Tompkins,
Clerk of Probate Court,
Girard, Alabama.

Each fortune teller, palmist, and clairvoyant, in order to ply his or her trade, must pay a State and County license for each location where he or she plies such trade.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of August 28th to hand. You ask to be advised as to whether or not a party who has once paid State and County license under Section 73 of the Revenue Code, in any tax year, would be required to pay the State license again on moving to another County. The party you speak of paid State and County license in Jefferson County.

I presume that you mean license under Schedule 73 of the 1929 Compilation. This Section reads as follows: "For each fortune teller, palmist, clairvoyant, fifty dollars." This Schedule is Schedule 54 of Section 361 of the 1919 Revenue Act (Acts 1919, page 412). The first sentence of Section 361 is as follows:

"That every person, firm, company, corporation or association engaged in any business, vocation, occupation, calling or profession hereinafter enumerated, or who shall exercise any privilege herein-

after described for which a license or privilege tax is required, shall first procure a license, and shall pay for the same, or shall pay for the exercise of such privilege the amounts hereinafter provided and comply with all other provisions of this act."

It will be kept in mind that the license mentioned in each of these schedules in Section 361 is the State license.

Section 362 of the 1919 Revenue Act is as follows:

"There is also hereby levied for the use of each county in the State a license or privilege tax upon each person, firm, or corporation engaged in, or who shall carry on any of the occupations, business, professions, or callings, or shall exercise any privilege or do any act for which a license is charged by the State, of fifty per cent of the State license or privilege tax, except as herein otherwise provided."

This provides for the County license where there is a State license, unless otherwise provided.

Section 363 of the 1919 Revenue Act provides among other requirements:

"Such judge shall issue the license countersigned by him, in the form and on the blank to be furnished to him by the State Auditor, which shall set forth and specify the name of the person, firm or corporation applying therefor, the business or act which it is proposed to carry on or do thereunder, the name of the street or location where it is proposed to carry on the same, if such location be in a city or town and have a street number, and if not, then the location and amount paid for such license, and the time for which it is issued * * * and such license shall not be transferable, nor shall it entitle the holder thereof to carry on any other business or do any other act than that named therein, nor **at any other location than that therein specified.**"

From the foregoing statutory provisions, if the woman in question took a license in Jefferson County, the Probate Judge issuing the license should have designated, in the license, the business or act she was to perform, the name of the street or location where she proposed to carry on same. It was unlawful to carry on such business elsewhere, even in Jefferson County, without taking out another State and County license. Except as provided in said Section 363—"Provided, that in case it should become necessary to remove any business for which a license is required by this section from one location to another location in the **same city** or **town** and such business is continued as the same kind and character by the same person or firm as that carried on at the former location, another license shall not be required." Of course, there is in said Section a provision as to peddlers, who necessarily travel about in plying their trade.

From the foregoing statutory provisions, you will see that a person taking out a license for telling fortunes at one location cannot change to another location except in the same city or town, without taking out another license, State and County, for operating in the new location. She will have to take out a new license for operating in each city, town, or location in the county out of the city or town, in each County in the State where she plies her trade of fortune telling.

You will see that such license is for doing business at the location named in the license. If she operates at another place than the one named in the license another State and County license is required for operating at the new place.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 8, 1932.

Hon. John Brandon,
State Auditor,
CAPITOL.

Clerks of Circuit Courts are entitled to the five percent commission provided by Acts of the Legislature approved July 22, 1931, and July 28, 1931, relating to a five percent commission for the collection of trial tax.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I beg to acknowledge receipt of your letter of August 24, 1932, as follows:

"On August 27, 1931, you rendered an opinion declaring Senate Bill No. 291 unconstitutional.

"On August 7, 1931, you rendered an opinion declaring House Bill No. 528 unconstitutional.

"Both bills relate to a 5% commission on trial tax remitted by the Circuit Clerks. The Supreme Court has held that House Bill 528 is constitutional on the grounds that same is not a revenue bill. They fail to state whether the clerks are entitled to the 5% commission. Are the clerks entitled to a commission of 5% under House Bill No. 528?"

I have examined Act No. 291, at page 669 of the General Acts of Alabama, 1931, which Act was approved July 28, 1931, and House Bill No. 528 at page 604 of the General Acts of Alabama, 1931, which latter mentioned Act was approved July 22, 1931.

In my judgment the clerks of the circuit courts are entitled to the five percent commission provided in these two Acts. Sufficient additional duties are provided to entitle the Clerk to the additional compensation.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 8, 1932.

Hon. J. D. Starkey,
Tax Collector, Jackson County,
Scottsboro, Alabama.

1. Real property cannot be sold for city taxes under the decree of Probate Court with sale for State and County taxes.

2. Real property sold for the payment of city taxes may not be bought in for the State.

3. Where real property is bought in for the State on sale for payment of State and County taxes, the city may redeem from the State as provided by Section 2145 of the Code; or may wait until property is otherwise redeemed and then enforce its lien.

4. The sale of real property for payment of State and County taxes does not destroy the lien for the payment of city taxes.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Receipt of your letter of July 26, 1932, is acknowledged. You state the following as facts:

The City of Scottsboro has adopted an ordinance under the provisions of Section 3095 of the Code of Alabama. Under this ordinance, you as County Tax Collector are required to collect city taxes as State and County taxes are collected. In several instances taxpayers owning property in said city have paid their State and County taxes but failed to pay the city taxes. In other instances neither the city nor the State and County taxes were paid and you advertised and sold the property for the State and County taxes only, and did not include the city taxes which are still delinquent.

You ask my opinion as to the following:

"1. Should I have included the city taxes with the State and County taxes; advertised and sold the property for the payment of both taxes?

"2. If you answer the above question in the affirmative, in the event no one bid on the sale and the State had to buy the property, should the State bid only the amount of State and County taxes, or, should the State bid in the city taxes also?

"3. If the State bids in both the State and County and city taxes at such sale, what procedure is necessary for the city to collect its part of said taxes from the State?

"4. How should I now proceed to advertise and sell the property I have previously sold for State and County taxes because of the non-payment of the city tax?

"5. Would the fact that I have sold some of the property for State and County tax cut off the lien of the city for delinquent city taxes on this same property?"

In reply to your question (1), will say you acted properly in proceeding to sell the property, or so much thereof as was necessary, first for the payment of State and County taxes.

The lien of the State upon property assessed is superior to every other lien; the lien of the County next, the lien of the city next.

Section 416, Revenue Act 1916;
Section 2129, Code of Alabama, 1923.

There is no provision in the statutes for selling real estate for payment of all three of such taxes at the same time and under the same decree of the Probate Court. The proceeding for selling real estate for State and County taxes is one, while the proceeding for selling real estate for city taxes is another, though like in form.

In answer to your question (2) will say that there is no authority for buying in for the State, property sold for city taxes.

In answer to your question (3) will say that where property has been sold for State and County taxes, the remedy of the city is to redeem as provided by Section 2145 of the Code of Alabama; or, it may wait until the property sold for State and County taxes has been otherwise redeemed and then sell such property for the city taxes.

In answer to your question (4) will say that until the property sold for State and County taxes is otherwise redeemed, the remedy for the city is to redeem as provided by said Section 2145 of the Code of Alabama.

In answer to your question (5) will say that the fact that you have sold property in the city for State and County taxes would not cut off the lien for city taxes.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 9, 1932.

Hon. D. E. Laslie,
Judge of Probate, Macon County,
Tuskegee, Alabama.

1. The administrator of an estate to whom letters of administration were granted October 21st, 1931, was permitted by the law to file his accounts for final settlement at any time or after April 21st, 1932, if the debts were all paid and the condition of the estate in other respects admitted of it.

2. Any person entitled to distribution out of the estate named could have filed his application for distribution on April 21st, 1932, or at any time since; and if, on the hearing of such application, the Probate Court was satisfied from the evidence that the assets of the estate were more than sufficient to pay the debts and charges, it could have ordered a distribution for such portion of the distributive share of the applicant as might have been authorized by the evidence, on the applicant's giving bond as by statute.

3. The time limit for filing claims against said estate was April 20th, 1932, with certain exceptions named by statute.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Receipt of your letter of July 19th is acknowledged. You request my opinion upon the following:

1. How soon may the administrator of an estate have a final settlement of his administration, letters of administration having been granted October 21st, 1931?

2. At what time could the Probate Court have ordered the distribution of the assets of such estate on the petition of an heir?

3. When would the time limit for filing claims against said estate expire?

In reply to your question numbered (1) will say that the time the administrator of said estate could have filed his accounts for final settlement is governed by Section 5900 of the Code of Alabama, as amended by Act No. 718, approved August 1st, 1931 (Acts 1931, page 338).

Under the provisions of this Act as amended, where letters were granted October 21st, 1931, the administrator could, if the debts were all paid and the condition of the estate would admit of it, have filed his account for final settlement on April 21st, 1932.

In reply to your question (2) will say that the answer to this question is governed by Section 5964 of the Code of Alabama as amended by Act No. 728, approved August 1st, 1931 (Acts 1931, page 842). Any person entitled to distribution in said estate could have filed his application for distribution on April 21st, 1932, and if, on the hearing of such application, the Probate Court was satisfied from the evidence that assets of the estate were more than sufficient to pay the debts and charges, it could have ordered a distribution of such portion of the distributive share of the applicant as might have been authorized by the evidence.—Code of Alabama, Section 6967. To do so, such applicant should have given a refunding bond as provided by Section 5968 of the Code.

In answer to your question (3) will say that the time limit for filing claims against said estate was governed by Section 5814 of the Code of Alabama as amended by Act No. 722, approved August 1st, 1932, and Section 5815 of the Code of Alabama, as amended by Act No. 723, approved August 1st, 1931, and by Sections 5816 and 5817 of the Code of Alabama. The last day for filing claims against said estate, except in the cases otherwise provided by statute was April 20th, 1932.

Each of the acts constituting these amendments were approved August 1st, 1931, to take effect January 1st, 1932. The purpose of so delaying the time for the act to go into effect was to give the acts a retroactive effect.—Cronheim vs. Loveman, 142 So. 550. The time for filing accounts by an administrator to make a final settlement; the time for filing claims against an estate; the time after which an heir may file his application for his distributive share, is not a vested right. Each is a right given by statute and may, in a proper manner, be changed by statute. Neither is a vested right.—Cronheim vs. Loveman, 142 So. 550; Henry vs. Thorpe, 14 Ala. 103. As said in Cronheim vs. Loveman, supra:

> "It is clear that when a statute creates the right to a new proceeding or a new right of action, it is entirely within the legislative control, and is not vested either in respect to its use or in respect to the time the right to its use is fixed as a condition thereto."

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 9, 1932.

Hon. U. G. Jones,
Deputy Solicitor, Elmore County,
Wetumpka, Alabama.

The office of the Deputy Solicitor is not entitled to telephone service paid for by the County.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of August 23, 1932, in which you request my opinion as follows:

"Is the Commissioner's Court of Elmore County authorized by law to provide a telephone and pay for the services of same for the office of County Solicitor of said County?"

I find no authority of law for furnishing the office of the County or Deputy Solicitor with a telephone at the expense of the County. I call your attention to an Act approved July 31, 1931, General Acts, 1931, page 759. This Act is amending Section 6755, Code of Alabama, 1923, and reads in part as follows:

"To procure and provide telephones for the offices of the circuit judge, the clerk and register of the circuit court, the offices of the sheriff and jailer, tax assessor and tax collector, and the judge of probate in their respective counties, and to pay for the same out of the general funds of the county."

You will note that the Deputy Solicitor is not included among the county officers who are entitled to this service,

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 9, 1932.

Hon. John B. Weaver,
Judge of Probate, Winston County,
Double Springs, Alabama.

1. The meaning of the phrase: "including the current tax assessing year," in Section 3110 of the Code, means exactly what it says. It requires payment of the taxes for the current tax assessing year on the valuation fixed as required by Section 269 of the Revenue Act, 1919, as a condition of redemption.

2. When real estate is redeemed from the State after being bought in by the State for payment of taxes, and the taxes for the current tax assessing year are paid, then no taxes on such real estate are payable during the succeeding tax year. It is assessable during the succeeding tax assessment year, but this assessment is not payable until the succeeding tax year, or during the tax collecting year succeeding such assessment.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of August 3rd to hand. You ask my opinion as to the proper construction of the phrase: "including the current tax assessing year" in Section 3110 of the Code of Alabama. You ask:

1. Does it mean: "including the taxes due for the current tax assessing year?" or

2. Does it mean: "including the taxes to become due for the current tax assessing year?"

In reply will say that, in my opinion, the phrase means exactly what it says, and is not capable of any interpretation other than what it says.

In the regular assessment and collection of taxes, the assessment of taxes is made during one tax year, and the collection of the taxes so assessed is made the following tax year. The tax year runs from October 1st of one calendar year to September 30th of the succeeding calendar year, both dates inclusive. Lands are assessable to the person owning them on October 1st of any tax year. Lands owned by the State on the first of October, other than those bought in by the State for payment of taxes, as the law now stands, are not subject to taxes during the tax year beginning on that date. If such lands are sold by the State after October 1st of any tax year no taxes can be assessed on such lands for the tax year when sold. Lands bought in by the State for taxes are not taxable while held by the State prior to redemption. Such lands cannot be assessed to the former owner for whose taxes it was sold, nor can it be assessed to the State of Alabama. In such a situation, such lands may not legally be assessed to anyone. But, the terms for redemption of such lands are fixed by statute. The Legislature determines what must be paid on redemption. As to personal property sold for taxes, no redemption is allowed. As to real estate sold for taxes redemption is allowed as provided by statute.. One of the requirements for redemption is the payment of the taxes for the current assessing year on the valuation fixed as provided by Section 269 of the 1919 Revenue Act, as well as, on such valuation, for each other year since the year for the taxes of which the real estate was sold. If this were not done on redemption, there would be no method of assessing for the current assessing year, as the redemptioner did not own it on the first of October of such year, and

the State and County would lose one year's taxes on subsequent assessment. The Constitution controls as to amount of assessment that may be made on property to an individual, partnership or corporation. The Constitution says nothing as to what may be charged for redemption of property sold for payment of taxes.

It will be seen that when a redemptioner redeems property and pays the same required for taxes of the current assessing year, he is not requird to pay any taxes during the subsequent tax year; the property must be assessed, during the subsequent assessing tax year, but such assessment is not payable until the following tax year. The redemptioner did not own the real estate on the first day of October of the tax year in which he redeemed, and the real estate could not be assessed to him for such year in regular order of assessments; therefore, the statute requires that such redemptioner pay taxes on the valuation fixed as required by Section 269 of the 1919 Revenue Act as a charge on redemption.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 12, 1932.

Hon. L. W. Price,
Judge of Probate,
Evergreen, Alabama.

In a corporation, where the capital stock authorized is one hundred thousand dollars, the charter fee provided by Section 6969 of the Code is one hundred dollars, notwithstanding the fact that it comences to do business on a less amount.

Opinion by Assistant Attorney General Evans.

Dear Sir:

In your letter of August 9, 1932, you state the following as facts:

"A corporation is being formed here in which the authorized capital stock is one hundred thousand dollars, but the paid in capital with which the corporation is to commence business is twenty-five thousand dollars."

You wish my opinion as to whether, under the facts stated, you are required under Section 6969 of the Code of Alabama to collect of such corporation a charter fee of one hundred dollars or of twenty-five dollars.

In reply will say that, in my opinion, under the facts stated, you are required to collect a charter fee of one hundred dollars. The proposed

capital stock in the case stated is one hundred thousand dollars, and the twenty-five thousand dollars on which it commenced business was not the proposed capital stock within the meaning of Section 6969 of the Code of Alabama.

This, in my opinion, is clearly shown by Section 6972 of the Code of Alabama, "on fees for increasing capital stock." There would certainly be no need for increasing the capital stock until it was desired to have more capital stock than that already authorized or proposed; and additional charter fees would not be required until a proceeding of the stockholders to increase the capital stock above the one hundred thousand already authorized or proposed.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 13, 1932.

Hon. S. R. Butler,
State Tax Commissioner,
CAPITOL.

License inspector is entitled to fees provided by law in the case of citing a non-resident owner of an automobile, provided such non-resident owner does not fall under the terms and provisions of the non-resident owner exemption Act approved July 30, 1931.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your letter relative to delinquencies in case of licenses for foreign cars received. Your letter follows:

"License Inspectors are allowed fees under the law only in cases where licenses are delinquent. A question has arisen whether there is any delinquency before November 15th in the case of a car coming into Alabama from another State, required by law to take out an Alabama license tag. Attorneys for the foreign car in such cases are contending that the License Inspector would not be entitled to a fee in this case because he cannot be allowed a fee except in the case of delinquency beginning on November 15th of each year.

"Section 11½ of the Motor Vehicle Act of 1923, (See Acts 1923, page 284), provides:

'All licenses under this Act shall become due on October 1st of each year and delinquent on November 15th thereafter.'

"It is our opinion that this section has no application at all to cases of tags for which foreign cars are liable under the reciprocity laws of this State. You will note that the quoted section of the law refers to licenses due on October 1st of each year, and we think that these are the licenses which become delinquent on November 15th. If a foreign car is liable for a license, it becomes liable for license as soon as it comes into Alabama and is not due a license on October 1st unless it happens to come into Alabama on that date.

"Please advise us if we are correct in holding that the provisions of law making automobile licenses delinquent on November 15th has no application in the case of a foreign car coming into this State with liability for an Alabama tag."

All car tag licenses are due on October 1st and delinquent on November 15th. This is provided by Section 11½ of the Motor Vehicle Act of 1923, page 284.

Section 19 of an Act approved July 22, 1927, at page 160 provides for exemption of non-resident owners of motor vehicles. This Act was amended by an Act of the Legislature of July 30, 1931. The amended Act provides certain exemptions for non-resident owners of automobiles.

The delinquency mentioned in Section 11½ of the Motor Vehicle Act of 1923 is not controlling where foreign cars are involved. When a foreign car comes into this State, the State Tax Commission, acting through the license inspector, should inquire whether or not the owner of the vehicle is entitled to any of the benefits provided by the Act of the Legislature approved July 30, 1931, which Act provides for certain exemptions to non-resident owners. If the non-resident owner is entitled to the benefits of the Act approved July 30, 1931, then no duty devolves upon the Tax Commission nor the license inspector to cite such owner, but if the non-resident owner is not entitled to the benefits of the Act approved July 30, 1931, such non-resident owner is delinquent immediately upon coming into this State. Persons living in other States are charged with notice of the laws of this State in the same way that persons living in this State are charged with notice of the laws of this State. A license inspector is entitled to his fees for citing such non-resident owner if such non-resident owner is not entitled to the benefits of the Act approved July 30, 1931.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 13, 1932.

Hon. W. L. Pratt,
Judge of Probate,
Centerville, Bibb County, Alabama.

Premiums on official bonds of all county officers payable out of the county treasurer; Register in Chancery is a county officer.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your letter of recent date has been received. Your letter follows:

Please advise if the county is required to pay premium on official bond of the Register in Chancery.

The Code of Alabama provides that the premiums on the bonds of all county officers shall be paid out of the county treasury. This office has held that a Register in Chancery is a county officer. It is my judgment that the premium on the bond of the Register in Chancery should be paid out of the county treasury.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 13, 1932.

Hon. Price Williams,
Judge of Probate,
Mobile, Mobile County, Alabama.

A veteran who served during the World War in the army of a nation or country that was an ally of the United States, is not entitled to the benefits of the Veterans Exemption Act of 1931.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I beg to acknowledge receipt of your letter of May 5th, together with the letter from Mr. E. L. Curry. Your letter follows:

"Enclosed find a letter from Mr. E. L. Curry. I advised Mr. Curry that inasmuch as he was not enlisted and discharged from the United States Army during the World War, that he was not entitled to an exemption, but he insisted that I forward his letter to you for your opinion."

The letter of Mr. Curry follows:

"I am an American born citizen and a World War veteran and a member of the American Legion, Lamar McLeod Post No. 3, Mobile, Ala. Membership Card No. 344844.

"I have read in the newspapers of this City that you have ruled to the effect that all World War veterans are exempt from paying a Business Tax to the extent of $25.00.

"I would like you to make clear the definition of a World War veteran as applicable to American born citizens.

"In 1916 I was working in British Columbia for an American Contractor, and in December of that year I joined the Canadian Naval Division and went overseas in February of 1917. In April of the same year Uncle Sam declared War. I was then in the North Sea Patrol and wrote to the American Ambassador for a transfer from the Canadian forces to the American. He forwarded my letter to Admiral Sims, who replied to the effect that 'All Americans serving the Allied forces are serving the interests of their country best by staying in those forces.'

"Accordingly, I feel that I am entitled to whatever concessions are given to other World War veterans. Am I exempt from paying my poll tax and the $25.00 Business Tax or not? The American Legion here says that I am entitled to the privilege. Accordingly, I would like to have your ruling in this case."

It is my judgment that Mr. Curry is not entitled to the exemption provided for World War Veterans. The Act does not exempt veterans who served with allied nations.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 14, 1932.

Mr. P. H. Cannady,
Jackson, Alabama.

Elections—Ballots must be numbered. Voter cannot demand unnumbered ballot from manager.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of July 28, 1932, in which you ask my opinion as to whether or not ballots at an election must be numbered and if so, how.

You further ask if a party offering to vote at an election may demand of the managers an unnumbered ballot.

I presume you have reference to the General Primary Law approved March 4, 1931 (General Acts, 1931, page 73). With this presumption, I am calling your attention to Section 19 which is as follows:

> "Section 19. The ballot of every voter shall be kept secret and inviolate. As the inspectors deposit the ballot, the name of the voter shall be checked off the official voting lists. One of the inspectors, as he hands out the ballot to the voter, shall initial the same on its back and before depositing it in the ballot box shall examine said ballot and see that it contains the identical initials aforesaid, and said ballot shall be numbered on the back thereof by one of the inspectors before being deposited in the ballot box and a corresponding number placed by the clerks on a record to be kept for that purpose by them, which record shall be enclosed in a separate envelope and sealed and directed to the Chairman of the County Executive Committee, and delivered to him by the returning officer, and be kept by such Chairman, and opened only as herein provided. In the event of a contest such sealed record of only the counties, districts, precincts, or wards, concerned in the contests, shall be opened, and when opened, may be used in evidence so far as necessary. Such chairman shall not open such sealed records except on proper demand, as provided for in this act, or as permitted by law, or to make certified copies on such demand; and he shall not open them except in the presence of the trial committee. After the time allowed by law for filing contests, if no contest be filed, the Chairman of the County Executive Committee shall destroy sealed records."

It is the duty of one of the managers at an election to number the ballot on the back when handing it to the voter and each number must correspond to the number which the clerk must put in front of his name in filling out the poll list.

A voter cannot demand an unnumbered ballot for the reason that the Act above set out specifically states that, "Each ballot must be numbered before handing it to the voter," and that when the ballot is returned by the voter to be placed in the ballot box, it is the duty of the manager to again inspect the ballot to see that the original number still remains on the same.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 15, 1932.

Hon. J. M. Money,
Probate Judge of Jackson County,
Scottsboro, Alabama.

Gasoline Fund—Used to purchase rights of way.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of August 23, 1932, in which you request an opinion of this office as to whether or not the moneys derived from the excise tax on gasoline can be expended legally for the purpose of procuring rights of way for certain state projects in Jackson County.

Section 1397 (33) Michie's Code of 1928, Acts of 1927, page 358, Section 31 of the Highway Code of 1929 provides how rights of way are to be obtained.

"The right of way deemed necessary by the State Highway Department for a road or bridge constructed under the provisions of this article shall be acquired by the county in which such road is to be located, without expense to the State. Should the county fail or refuse to acquire the necessary right of way, the State through the State Highway Department shall have authority at the expense of the county to acquire such right of way, either by purchase or by the exercise of the right of eminent domain in condemnation proceedings as is provided for under the laws of this State."

Jackson County at this time receives the gasoline tax as levied by an Act of the Legislature of 1923, page 36 as amended by Acts 1927, page 326, and Acts 1931, page 459.

The Act last mentioned is of course the one now in force and effect and provides that all the funds derived by the several counties from said tax shall be expended exclusively for the maintenance, construction, or repair of roads or highways or bridges in said county. The 1927 Act, supra, limited the use of said moneys to maintenance and repair.

After October 1, 1931, the counties will receive an additional sum from an excise tax on gasoline as provided for by an Act of the 1931 Legislature, General Acts 1931, page 859, which act provides that the moneys so received shall be used exclusively for the construction and maintenance and policing of the public roads in the respective counties.

In addition to the above the Legislature of 1927, local Acts 1927, page 185 authorized the Court of County Commissioners to levy an excise tax of three cents per gallon on gasoline sold in said county. The pertinent parts of said Act are as follows:

"Section 3. One-third of said excise tax collected within the corporate limits of any incorporated city or town in Jackson County, Alabama, shall be paid over to such incorporated city or town. The remaining two-thirds of said excise tax collected in incorporated cities and towns and all other said excise tax collected in said county shall be paid into the County Depository and distributed equally among the four Commissioners districts of said county."

"Section 5. That all moneys collected from the excise tax authorized in Section 1 of this Act shall be used solely for the building, construction, maintenance, repair and operation of public streets, roads, bridges and ferries in said County of Jackson and any incorporated city or town therein."

In view of the above provisions, it is my opinion that the moneys derived from the State excise tax on gasoline can be legally expended for the purchase of rights of way as a right of way must be obtained before a road can be built and the obtaining of such right of way is incident to the construction of the road and is a part thereof.

In regard to the County excise tax, it is my opinion that the money set apart for a particular district may be used to purchase rights of way in that district, but that it would not be legal to use money which should go to one district to purchase a right of way for a road which will not go through such district.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 15, 1932.

Hon. Lloyd Woodruff,
County Superintendent of Education,
Greenville, Butler County, Alabama.

H. B. 191, General Acts 1931, page 672 unconstitutional.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

I have your letter of recent date in which you request an opinion of this office as to the constitutionality of H. B. 191, General Acts 1931, page 672 and which act is in words and figures as follows:

"An Act, To provide for the election of District School Trustees for the several school districts of the State of Alabama:

"Be it enacted by the Legislature of Alabama:

"Section 1. That on the first Saturday in May, 1932, and every two years thereafter, three school trustees shall be elected for each school in every county by the patrons of the school. The county superintendent of education shall appoint three managers to hold the election at each school who shall conduct the election in accordance with regulations prepared by the county superintendent of education and approved by the county board of education. The results of the election shall be reported to the county superintendent of education on a certificate signed by the managers of the election, provided, however that this shall not apply to incorporated cities or towns having city or town boards of education.

"Section 2. That the trustees elected under the provisions of this Act, except as otherwise provided by law, shall have charge of the school buildings and grounds and shall advise and cooperate with the county boards of education in all matters relating to the general welfare of the school. The trustees shall have authority by a unanimous vote to refuse to accept the assignment of any teacher within ten days after the date of the superintendent's notice of assignment upon written notification to the county superintendent of education setting out the reasons for such refusal.

"Section 3. That when any vacancy occurs on the Board of School Trustees elected under the provisions of this Act, the same shall be filled by the County Board of Education and the person thus elected shall hold office until his successor is elected and qualified. Provided that the County Board of Education may remove any school district trustee elected under the provisions of this Act upon recommendation of the County Superintendent of Education, for misconduct, or wilful neglect of duties.

"Section 4. That all laws and parts of laws in conflict with the provisions of this Act be and the same are hereby repealed.

"Section 5. Provided the provisions of this Act shall not apply to counties now having or that may hereafter have a population of more than ninety thousand inhabitants by the present or any subsequent federal census.

"Section 6. That the managers of said election shall serve without pay."

It is my opinion that the act is unconstitutional and void in that it is not in compliance with Section 45 of the 1901 Constitution. Section 45 of the Constitution is as follows:

"The style of the laws of this State shall be, 'Be it enacted by the legislature of Alabama,' which need not be repeated, but the act

shall be divided into sections for convenience, according to substance and the sections designated merely by figures. Each law shall contain but one subject, **which shall be clearly expressed in its title,** except general appropriation bills, general revenue bills, and bills adopting a code, digest or revision of statutes; and no law shall be revised, amended, or the provisions thereof extended or conferred, by reference to its title only; but so much thereof as is revised, annulled, extended or conferred, shall be re-enacted and published at length."

The title of the Act in question provides for the election of **District** School trustees but nowhere in the body of the Act is the word district mentioned. The body of the act providing for the election of trustees for each school in every county; hence it is my opinion that the act fails to comply with the part of Section 45 of the Constitution to the effect that, "Each law shall contain but one subject which shall be clearly expressed in its title."

In reaching this opinion I have kept in mind the fact that in construing an act it should, if possible, be given that construction which would uphold it as constitutional.

However, in view of the decision in the case of Ex parte Pollard, 40 Ala. 77, 98, which case has been followed by our Courts, I am of the opinion that the act must fall.

"The Constitution requires that only one subpect should be embraced, and that it should be described in the title. Subject is a very definite word. A phrase may state the subject in a very general or indefinite manner, or with minute particularity. The subject of laws with such titles as the following: 'To adopt a penal code,' 'To adopt the common law of England in part,' 'To adopt a code of laws,' 'To ratify the by-laws of a corporation,' would be expressed in a very general way, and very little knowledge of the specific provisions of the laws could be gleaned from the title; yet it would nevertheless be true that the subject was expressed in the title. There are different grades of particularity in which the subject of any writing may be designated. The object of the constitutional provision was to prevent deception by the inclusion in a bill of matter incongruous with the title. The evil contemplated was not the generality and comprehensiveness of titles. Those faults do not tend to mislead or deceive.

"There could be devised for the law in question a title which would describe a subject comprehensive and general enough to embrace all parts of the law. A subject might be found, under which every part of the law might be classed. **But that does not meet the constitutional requirement. The particular subject selected by the legislature and put in the title must embrace every part of the law. The question must always be, whether, taking from the title the subject, we can find anything in the bill** which cannot be referred to that subject.

If we do, the law embraces a subject not described in the title. But this conclusion should never be attained, except by argument characterized by liberality of construction and freedom from all nice verbal criticism."

In the instant case the only connection between the title and the body of the act is that they both deal with trustees. But the question arises as to what kind of trustees, school or district.

I am therefore compelled to rule that the act is unconstitutional and void.

I have herefore rendered several opinions dealing with various phases of this act but not with the constitutionality thereof. Those opinions which deal with the act in question alone and not with a general principle or principles of law applicable to schools or school trustees are hereby rendered ineffective.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 15, 1932.

Hon. John Brandon,
State Auditor,
CAPITOL.

The payment required for redemption of real estate sold for the payment of taxes and bought in by the State is a matter entirely under the control of the Legislature and is provided by Section 3110 of the Code of Alabama.

The taxes required to be paid on redemption is different from the taxes required to be paid on property in the regular course by reason of ownership.

Opinion by Assistant Attorney General Evans.

Dear Sir:

In your letter of July 27th you make the following inquiry:

Under the provisions of Section 3110 of the Code as to redemption of lands bought by the State, and under Section 3111 of the Code as to redemption of lands bought in by another than the State, and under Section 3 of Act No. 172 approved August 22nd, 1923, making all taxes due October 1st succeeding the tax assessing year, you wish my opinion whether a party redeeming from the State under Section 3110 of

the Code, must deposit taxes of the current tax assessing year with the Judge of Probate, which said taxes are not actually due to be paid until October 1st of said current tax assessing year.

In reply will say that the last clause in the last sentence above is not a correct statement of fact. When premises are incorrectly stated, conclusions are liable to be incorrect.

The time when due and payable as provided by Section 3 of Act No. 172, approved August 22nd, 1923, refers to taxes that have been assessed in the regular order of tax assessment and collection.

What is due and payable at the time of redemption of property that has been sold for payment of taxes, and bought in by the State, has no reference to the regular order of assessment and collection. Section 3110 of the Code provides what is required in order to redeem such property. This question of redemption is purely a legislative matter; and the Legislature has provided what shall be paid in order to redeem. One thing required to be paid is the taxes for the current assessment year. The manner of fixing the amount of taxes for each year subsequent to the year's taxes for which the real estate is sold is provided by Section 269 of the 1919 Revenue Acts (Acts 1919, pages 360, 361). What shall be paid at the time of redemption is provided by said Section 3110 of the Code of Alabama.

Of course, it will be kept in mind that when the redemptioner pays the taxes of the current assessment year, taxes on such property will not be payable again until after the following tax assessment year. There are no taxes assessed against the original owner of such property, by reason of ownership of such property, after such property is sold for the payment of taxes and bought in by the State, until the original owner redeems it; and, since the original owner had not redeemed it on October 1st of the assessment year, the property would go without taxation for the year of redemption, if the redemptioner were not required to pay for such year, on a valuation as fixed under said Section 269 of the 1919 Revenue Act.

As already said, real estate is assessable by reason of ownership on October 1st of the tax assessment year. Since such real estate was not assessable to the original owner on that date, nor to anyone else, it would escape taxes for the tax assessment year in which redeemed, but for the provision in Section 3110 of the Code of Alabama, requiring the tax to be paid as of that tax assessment year, on a valuation fixed as provided by Section 269 of the 1919 Revenue Act, as a condition of redemption.

It will be kept in mind that whether or not property sold for the payment of taxes may be redeemed, and if so, how, was left by the Constitution to the Legislature. The Legislature has seen fit to not allow redemption of personal property sold for the payment of taxes, and has prescribed by Section 3110 of the Code of Alabama how real estate sold for the

payment of taxes and bought in by the State may be redeemed. This Section of the Code in no way contravenes any Section of the Constitution of the State of Alabama, nor of the Federal Constitution.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 16, 1932.

Hon. Coma Garrett, Jr.,
Senator, 19th District,
CAPITOL.

Construing Section 3758, Code of Alabama, 1923, as to the following item of cost: "For trial, entering judgment and when an appeal is taken approving bond and certifying proceedings . . . $5.00:"

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of August 31, 1932, in which you request my opinion as follows:

"I herewith call your attention to Section 3758 of the Criminal Code of Alabama of 1923 headed 'Fees in County Court.'

"In said section you will find listed the following:

'For trial, entering judgment and when an appeal is taken approving bond and certifying proceedings . . . $5.00.'

"Please advise me if this is a legal charge against a defendant where a case in court is dismissed upon the payment of cost. Otherwise, I would like to know if this $5.00 should be added by the Clerk of the Court as a cost item when no fine is levied and the case dismissed as I have stated above."

I do not think this would be a proper charge where a case is dismissed. You will note that Section 3758, Code of Alabama, 1923, says among other things: "For trial, entering judgment and when an appeal is taken, approving bond and certifying proceedings . . . $5.00". It is my opinion if the case is dimissed, it could not be said that there was a trial and from such a judgment in a criminal case there could be no appeal.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 16, 1932.

Hon. D. E. Laslie,
Judge of Probate, Macon County,
Tuskegee, Alabama.

A deed by a mortgagor to a mortgagee of the property in mortgage in payment of the mortgage debt requires, on filing for record, the payment of a deed filing tax as provided by Section 21½ of Act No. 163, approved July 22, 1927; although the deed contains an agreement for repurchase by the vendor.

If, however, the instrument is, in fact, security for a debt and the title to the property is divested by the vendor paying the debt, the instrument is a mortgage, and requires a mortgage filing tax, as provided by Section 4½ of Act No. 172, approved August 22, 1923.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Receipt of your letter of August 18th is acknowledged. You make the following statement as facts:

"'A' mortgages real estate to 'B' which mortgage is recorded and all fees paid. 'B' dies and all of his heirs join in the legal transfer of said mortgage to 'C'. Then the mortgage becomes due and 'A,' in lieu of foreclosure, conveys the property to 'C,' reserving his statutory right to redeem the same."

You desire my opinion as to what filing tax you should collect of "C" on presenting such instrument in writing for record.

In reply will say that, under the facts stated, in my opinion, said instrument is a deed and requires a filing tax as provided by Section 21½ of Act No. 163, approved July 22nd, 1927. Evidently the object of the conveyance was to put "C" in the same condition he would have been in had he foreclosed the mortgage and had become a purchaser at the sale. I judge from what you state that the conveyance was in payment of the debt and there was no question of default in payment of debt and foreclosure on failure to make payment; but, in fact, giving "A" the right to repurchase within the period if he saw fit. In such a case a new deed from "C" to "A" would be necessary.

If the instrument was so written that the payment of the sum agreed upon divested the title passing by the instrument, it was a mortgage and required, on filing, a mortgage filing tax, as provided by Section 4½ of Act No. 172, approved August 22nd, 1923.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 16, 1932.

Hon. J. H. Hard, Chief Examiner,
Department of Examiners of Accounts,
CAPITOL.

Sureties on the bond of de facto officer are liable for misappropriation of moneys by such de facto officer; de facto officer is liable both criminally and civilly.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I beg to acknowledge receipt of your letter in which you inquire about the criminal liability of Mark L. Jeter as Ex Officio Clerk of the Court of Common Claims of Jefferson County. In your letter you also inquire about the liability of the sureties on his official bond. Your letter follows:

"In a recent examination made by Lewis Bowen, Assistant Examiner of Accounts, of the office of Mark L. Jeter, Clerk of the First Division Municipal Court of Birmingham, and Ex Officio Clerk of the Birmingham Court of Common Claims, he charges among other things, Mark L. Jeter as Ex Officio Clerk of the Court of Common Claims with having collected and failed to account for $120.85.

"For your information I will state that the Act creating the Court of Common Claims was declared unconstitutional by the Supreme Court. When this was done there was a balance in the hands of Mark L. Jeter as Ex Officio Clerk of the Court of Common Claims $120.85, and as Ex Officio Clerk of the Court of Common Claims he drew his check in favor of himself as Clerk of the Municipal Court of Birmingham, First Division, in the sum of $120.85 with this indication on said check: 'Balance Common Claims Court.' This check was drawn on the Federated Bank & Trust Company of Birmingham where the funds collected by Mark L. Jeter as Ex Officio Clerk of the Court of Common Claims deposited the collections for said court. It is endorsed for payment 'Mark L. Jeter, Clerk Municipal Court of Birmingham, First Division.'

"The Attorney General's office has rendered an opinion that where collections are made by an officer of a court which was afterwards declared unconstitutional the funds so collected and in the hands of such officer belong to the individuals from whom he had collected the same.

"In this instance, however, Mark L. Jeter did not seek to return such collections as Ex Officio Clerk of the Court of Common Claims, but paid them over to himself as Clerk of a court that existed and still exists.

"Under a recent Act of the Legislature the public officers of Jefferson County are required to pay into the Treasury of said County all collections that they may have in hand by virtue of their respective offices.

"The Union Indemnity Company was surety on the official bond of Mark L. Jeter as Clerk of the Municipal Court of Birmingham, First Division, and was also on his bond as Ex-Officio Clerk of the Court of Common Claims.

"Will you please advise whether or not Mark L. Jeter and the surety on his official bond is liable on said bond for the payment of $120.85 so indicated above to the County Treasurer of Jefferson County?

"If there is no liability to the County for this money is Mark L. Jeter and the Union Indemnity Company, surety on his official bond, liable to the individuals from whom he collected this $120.85?"

In answer to your inquiry, I beg to refer you to Section 2583 of Vol. 1 of the Code of Alabama, 1923. Section 2583 provides:

"2583. Acts of de facto officer valid.—The official acts of any persons in possession of a public office, and exercising the functions thereof, shall be valid and binding as official acts, in regard to all persons interested or affected thereby, whether such person be lawfully entitled to hold office or not, and whether such person be lawfully qualified or not; but such person shall be liable to all penalties imposed by law for usurping or unlawfully holding office, or for exercising the functions thereof without lawful right, or without being qualified according to law."

I am of the opinion that at the time Mark L. Jeter came into possession of the $120.25 he was a de facto officer. The sureties on the bond of a de facto officer are liable and Mark L. Jeter is also liable civilly and criminally.

I beg to refer you to paragraph 5, Section 393 at page 1065, Vol. 46 Corpus Juris:

"5. Bonds of De Facto Officers. Bonds given as security for the discharge of the duties of an office are good, although the principals thereon are officers de facto only, since neither the principal nor the sureties may be heard to impeach the official title of the principal."

The Courts in this State have held that bonds given as security for the discharge of the duties of an officer are good, although the principals thereon are de facto officers.

I also beg to refer you to paragraph G, Section 379 at page 1062 of Vol. 46 Corpus Juris. This section provides:

> G. Criminal Responsibilities. Criminal responsibility of officers for violation of official duties extends to de facto, as well as de jure, officers."

In my judgment the sureties on this man's official bond are liable. Mr. Jeter is liable both criminally and civilly.

In support of this opinion I beg to refer you to the following authorities:

Paragraph 379, p. 1062, Vol. 46 Corpus Juris;
Paragraph 393, p. 1065, Vol. 46 Corpus Juris;
Diggs v. State, 49 Ala. p. 311;
Health v. State, 36 Ala. 273;
Deason v. Gray, Sheriff, et al., 189 Ala. 672;
McKee v. Griffin, 66 Ala. 211;
McElhaney v. Gilleland, 30 Ala. p. 183;
Coleman v. Ormond, 66 Ala. p. 328.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 16, 1932.

Dr. J. N. Baker, M. D.,
Department of Public Health,
CAPITOL.

Banks and Banking—Unsecured deposit of the State Health Officer in defunct bank a preferred claim.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of August 24, 1932, together with correspondence and a fiduciary depositor's agreement concerning the Baldwin County bank at Bay Minette, Alabama. You state that some months ago, when said bank closed its doors, there was on deposit in your name as State Health Officer for use in the operation of Baldwin County Department of Health the sum of $508.23, which deposit was unsecured. You state further that an effort is being made at the present time to reopen the institution, which effort makes it necessary for practically all the depositors to enter into a certain agreement a copy of which I have on hand.

You request my opinion as to whether or not you should sign the enclosed agreement giving consideration to the fact that the deposit above referred to may be a preferred claim?

In answer to your inquiry I am of the opinion that the deposit in question is a perferred claim against the assets of the bank and that it would not be to your advantage to sign the agreement in question.

In the instant case there is a deposit of public funds in a bank and no bond or security was given for the safe return of the funds as provided by Section 3973, Code of Alabama, 1923. Such constituted an unauthorized deposit of public funds. The state has a lien or preferred claim to the funds of the bank.—**Montgomery, Superintendent of Banks vs. Sparks, Tax Collector,** 142 So. 769. The Court, in said case, speaking through Chief Justice Anderson, stated as follows:

> "It is a principle supported by numerous authorities that the unsecured deposit of public funds in a bank which subsequently becomes insolvent creates a trust relationship between the bank and community to which they belong . . . the lien of the State for payment of the trust fund will attach to all assets of the bank as a preferred claim. . . "

In view of the above, I am of the opinion that the deposit in the instant case is a preferred claim and further that it would not be to your advantage to sign the agreement in question.

I am enclosing herewith the attached correspondence and the agreement in this matter.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 17, 1932.

Hon. G. L. Malone,
Judge of Probate,
Fort Payne, DeKalb County, Alabama.

Absentee Ballot—How procured and to whom it must be returned.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of August 30, 1932, in which you request my opinion as follows:

"I desire to know if I have a right to deliver an absentee ballot to a person without a written request for this ballot from the person who will vote the ballot, unless the voter appears in person and asks for the ballot.

"I also desire to know if it is legal for the voter to vote the absentee ballot and mail it to some individual who will keep it until election day and then bring it to my office."

I call your attention to the opinion of the Attorney General, (Biennial Report of Attorney General, 1926-1928, p. 518). This opinion answers your inquiry and is as follows:

"I am requested by you to render an official opinion relating to the absentee voters law in primary elections. You request my opinion as to whether or not an absentee ballot can legally be sent by the Probate Judge to one absent from the county without a written request from such absent voter.

"By Section 678 of the Code of Alabama, 1923, the ballot is issued for an absent voter upon his request. By Section 683 of said Code, the application by such absent voter must be made in such form and in such manner as that it may be 'filed' by the Judge of Probate.

"In view of the aforementioned sections of the Code, I am of the opinion that the application made by the absent voter must be in writing, signed by him, and in such manner and form that it may be filed by the Judge of Probtae when received."

Answering your second inquiry, I call your attention to Section 406, Code of Alabama, 1923, which says in part:

"How ballot cast by absent voter.—The absent voter so entitled to vote, if at the time he requests such ballot, his name is on the official list of qualified voters in such county as a qualified voter thereof, may procure from the judge of probate of the county of his residence an official ballot hereinafter provided for use in such election, and such voter shall make and subscribe the oath or affidavit hereinafter set out and attach the same to his ballot, and forward the said ballot and affidavit in a sealed envelope by mail, postage prepaid, or otherwise, to the probate judge of the county in which such voter resides. * * *"

You will note from the above quoted section that it is the duty of the voter to mail such absentee vote direct to the Probate Judge.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 17, 1932.

Hon. J. Massey Edgar,
Attorney at Law,
Chatom, Alabama.

Dear Sir:

Commissioners Courts: Member not present cannot vote by proxy or power of attorney.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of August 12, 1932, which is as follows:

"You will please advise me as to the right of any person to use a power of attorney to cast a vote at a meeting of the commissioners court for an absent member of the Board to vote for a county treasurer. That is to say, that one member is sick and will not be present at the meeting and has given another member of the Board power of attorney to cast his ballot in favor of a certain person. I would like to have your opinion as to the legality of the proceeding."

It is my opinion that your question must be answered in the negative as the members of the court of county commissioners serve both as judicial and legislative officers and the duties of neither can be exercised by power of attorney or by proxy.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 17, 1932.

Hon. Pete B. Jarman, Jr.,
Secretary of State,
CAPITOL.

A single woman who has been appointed Notary Public and during her term gets married, does not vacate the office.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of June 24, 1932, in which you request my opinion as follows:

"Can a lady who has been commissioned a Notary Public before her marriage act as a Notary Public after her marriage under the same commission, or does it become necessary that she be appointed under her married name and procure another commission?"

It is my opinion that the appointment under Sections 9238 and 9239, Code of Alabama, 1923, is of the person and not the name. Therefore, it is my opinion such a person does not have to be reappointed, but holds office until her term expires. It is my further opinion that her official name is the name under which she was appointed; that is if she were Mary Jones she should continue after her marriage to sign all legal documents Mary Jones. Her name, it is true, has been changed so far as her domestic and social relations are concerned, but I do not think that by getting married her official name has been changed. For example, she was appointed as Mary Jones. Therefore, her official name will remain the same up to the expiration of her term of office.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 17, 1932.

Hon. C. A. Waite,
Sheriff, Clarke County,
Grove Hill, Alabama.

Prisoners—State liable for feed bill.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of August 18, 1932, in which you request my opinion as follows:

Please advise which is liable for feed bill of prisoners sentenced to county jail from Justice Court, the County or the State. Which is liable for feed bill of prisoners sentenced to county jail from Mayor's Court under authority of the Code giving mayors concurrent jurisdiction with County Court, the State or the County?

The State is liable for the feeding of all prisoners committed to the county jail for violations of criminal statutes of the State whether it be from Mayor's Court, Justice Court or any other court that has jurisdiction of crimes against the State. See Section 4831, Code of Alabama, 1923. Also see Article 2, p. 576, Vol. 2, Code of Alabama, 1923.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 17, 1932.

Hon. Claude Hardy,
Judge of Probate,
Brewton, Escambia County, Alabama.

Commissioners Court—Publication of semi-annual report of Commisisoners Court for any one year—The amount to be paid for such publication.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of August 12, 1932, in which you request my opinion as follows:

"I desire your ruling and opinion as to the true meaning of Section 6767 of the Alabama Code of 1923 on the following grounds:

(a). The County Commissioners have made publication of receipts and expenditures of the County in January and also in July of 1932, and bills and charges for the same are on file claiming $200.00 for this publication for the one year, and I am not willing to draw a warrant for $200.00 under said law unless you advise me to do so.

(b). The County Commissioners contend, and I contend, that the true meaning of this law is that the expenditures for this printing in any one year shall not exceed $100.00 in Esambia County, Ala., for the reason that this County has a population of less than 40,000 people."

In construing Section 6766 and Section 6767 together, I am of the opinion that the legislative intent is that $100.00, the amount allowed to be paid for this publication for both January and July of each year, was the sum total to be paid during any one year. You will note that Section 6766, supra, says among other things: "* * * shall make a semi-annual publication. * *" Section 6767, supra says: "* * * The compensation to be paid for **the publication** herein provided for shall not exceed one hundred dollars in counties of less than forty thousand population, etc." The question naturally arises: What publication is referred to by the above quoted paragraph? It is my opinion, in construing the meaning of the language used, that it is the publication required to be made in January and July of each year and does not mean each publication of January and July of each year.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 16, 1932.

Hon. G. W. Robertson,
Tax Assessor, Baldwin County,
Bay Minette, Alabama.

1. Commissions of Tax Assessors must be paid by the Tax Collector, out of the first money collected by him each tax year for assessments made by the Tax Assessor in the former tax year.

2. Commissions must be taken from each class of taxes collected for the payment of assessment of that class of taxes.

3. Enough of the Tax Assessor's commissions to take errors in assessment and taxes that cannot be collected and other deductions required by law to meet such deductions on final settlement.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of August 10, 1932, was duly received. You ask a reconsideration of the construction of Section 3040 of the Code in regard to commissions of Tax Assessors and time of payment. This Section reads as follows:

"Commissions of tax assessor.—The tax assessor shall during the current term of the present incumbent of said office be paid commissions as now provided by law, after the expiration of the present term of the present incumbent of the office of tax assessor, the tax assessor shall be entitled to receive from the tax collector, out of the first money collected by him, giving him duplicate receipts therefor, one of which receipts shall be forwarded to the state auditor by the tax collector, the following commissions, to-wit: In counties where the collections including taxes on real estate bid in at tax sales by the state, do not exceed twelve thousand dollars, the rate of commission shall be eight per cent on the first thousand dollars, four per cent on the second thousand dollars, and two per cent on the remainder. In counties where collections, including taxes on property bid in at tax sales by the state, exceed twelve thousand dollars, the commission shall be as above declared up to twelve thousand dollars, and one and one-half per cent on the remainder up to sixty thousand dollars, and on all above sixty thousand dollars, one per cent. He shall also be entitled to receive two per cent on all collections made by the tax collector of special taxes, whether such special taxes be levied for the state or county, to be paid out of such special taxes. The tax assessor shall receive two per cent commissions on all special county or district taxes levied for school purposes; but he shall not receive such commissions on such special school taxes unless he had properly apportioned such special taxes. In counties of more than one hundred and fifty thousand population according to the last federal cen-

sus, or any subsequent federal census, no fees or commissions shall be allowed for assessing the three mill county school tax and the three mill district school tax, but in lieu thereof the tax assessor in such counties shall be paid by the tax collector of such county the sum of one thousand dollars, which is provided by law to be retained by the tax collector for the tax assessor."

Owing to the wording of this Section of the Code and its history and its purpose, a proper construction of the legislative intent in adopting this Section in the Code is not free from difficulty.

First. Are the commissions provided by said Section, commissions on assessment made by the Assessor, or are they commissions on collections, made by the Tax Collector?

Second. If commissions of Tax Assessors are on collections, are they applied each tax collection year as payment for the work of the Tax Assessor for the current tax year or for his work of the year before?

Third. When and how are the commissions due the Tax Assessor paid by the Tax Collector?

In atempting a construction of said Section of the Code, in answering said questions, certain rules of construction should be kept clearly in mind. Among these are the following:

First, statutes should be so construed as to carry out the legislative purpose.—Louis & O'Fallon R. Co. vs. United States, 73 L. ed. 457; Shell vs. State, 2 Ala. App. 207.

Second, a statute must be construed as a whole and every word in it made effective, if possible.—Hawkins vs. Louisville & Nashville R. Co., 145 Ala. 385; Ex parte Dunlap, 71 Ala. 73; Brooks vs. Mobile School Commissioners, 31 Ala. 227.

Third, in determining the true meaning of a statute, the context must be considered.—Armstrong vs. Sellers, 182 Ala. 582.

Whether the commissions allowed in Section 3040 of the Code are commissions on assessments or collections, is, in my judgment, immaterial so far as a determination of the legislative intent in regard to the time of payment intended by said Section. When the tax collecting year begins the work for which the Assessor is to be paid has already been done, and the Section of the Code provides that "the Assessor shall be entitled to receive from the Tax Collector, out of the first moneys collected by him, giving him duplicate receipts therefor, one of which receipts shall be forwarded to the State Auditor by the Tax Collector, the following commissions, to-wit:' 'etc. In my opinion there is no way of giving effect to this part of Section 3040 of the Code, except by making payment of the Tax Assessor's commissions out of the first money collected by the Tax

Collector out of each class of taxes named. The commissions always refer to the class of taxes collected. Taxes generally collected do not pay commissions on special taxes nor on county or district school taxes. In other words, commissions of Tax Assessors must be paid on each class of taxes out of the first money collected by the Tax Collector out of that class of taxes.

It is true that Sections 3041 and 3042 of the Code provide certain commissions that shall not be paid, and that these can not all be known until collections have been completed, but this has been the law and the rule all the while, even before the adoption of the 1923 Code. It has been the practice of Tax Collectors to reserve enough out of the Tax Assessors commissions in each class of taxes to take care of such cases. Such, in my opinion, is still the proper procedure. There is, in my opinion, no change in Section 3040 of the Code, 1923, from what it was in Section 2097 of the Code of 1907, to justify the conclusion that a change in the time of payment of the Tax Assessor was intended by the Legislature; nor do we find any change in the legislative intent as to time of payment of commission in other Sections of the 1923 Code.

So far as the opinion of October 26th, 1931, is in conflict with the foregoing, the former opinion is overruled.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 19, 1932.

Hon. F. A. Walker,
Chairman, Russell County Democratic Executive Committee.
Hurtsboro, Alabama.

Chairman of any political party entering a primary under the laws of the State, is entitled to pay for the delivery of absentee ballots to each of the precincts or voting places in the county on election day.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of August 9, 1932, in which you request my opinion as follows:

Is the Chairman of the Democratic Executive Committee entitled to pay for sending out absentee ballots on the day of a primary election to the various precincts and voting places of the county?

It is my opinion that the Chairman of any political party which, under the law, is entitled to hold a primary election for the nomination of candidates to the various State and County offices, is entitled to pay for reasonable expenses for the delivering of absentee ballots to the managers of elections in the various voting places of the county, which votes or ballots are to be voted in the primary election.

You will note that Section 7 of an Act approved February 25, 1931, (General Acts 1931, p. 73) in referring to expenses of a primary held under its provisions, says as follows:

> "Section 7. That the officers and other expenses of any and all primary elections, general or special, held under the provisions of this Act shall be paid for in the same manner and to the same extent as is or many be provided by law for the payment of the expenses and officers of general elections held under the general election laws of Alabama, and to be paid out of the county treasury in the same manner; provided, however, that the cost of such primary elections held for municipalities or for the election of municipal officers or officials shall be paid for out of the treasury of such municipality."

This Act which is the Act of 1931 known as the General Primary Law does not seem to have changed by amendment or otherwise Article 3, Code of Alabama, 1923, as to the distribution and voting of absentee ballots.

Section 678, Code of Alabama, 1923, provides among other things that it shall be the duty of the chairman of any political party entering such primary to deliver the absentee ballots to the various voting places of the county **on election day**, and is in part as follows:

> "* * * The chairman of the county executive committee, or other authority as provided, shall endorse on said envelope over his signature the date and hour of the receipt thereof by him, and shall safely keep the said ballot without breaking the seal thereof, and deliver the same on election day to the officers of election at the voting place of said absent voter, when and where said election officer shall open said envelope. * * *"

I now call your attention to Section 684, Code of Alabama, 1923, which is as follows:

> "684. Expenses; how paid.—The expense of carrying out the provisions of this article shall be paid in the same manner as provided by law for the payment of expenses of primary elections."

It is my opinion that the above section, while it does not mention this particular item of expense, does say "the expense of carrying out the provisions of this article shall be paid." Certainly the delivery of the absentee ballots is the main provision of this article for without this all the article provides would be otherwise defeated.

Therefore, it is my opinion that the opinion of October 4, 1928, to the Chief Examiner of Accounts (Biennial Report of Attorney General, 1928-30, p. 11) be and the same is hereby overruled and the above opinion should be followed.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 19, 1932.

Hon. I. I. Moses, Chairman,
Bd. Roads and Revenue, Russell County,
Girard, Alabama.

The Probate Judge is without power to make and certify any other lists of qualified voters except those provided by Section 387 of the Code of Alabama of 1923.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of September 6, 1932, in which you request my opinion on the following matters:

1. Can the Judge of Probate of Russell County change the list which he published and certified to on the 15th day of April other than add any names which were omitted therefrom and added thereto, as provided he shall do within ten days after the publication of said list, and which were published on or before the first day of May, as provided in Section 387 of Code of Alabama, 1923?

2. If the published list of qualified electors of Russell County is changed and a new one prepared by the Judge of Probate of Russell County will the county be required to pay the Judge of Probate for the list so changed and prepared by him for the elections to be held in Russell County for this year, when the County had already had printed lists made from the list certified to, by the Judge of Probate sufficiently to care for all elections to be held this year?

3. Is there any authority of law for the Judge of Probate to make more than one corrected list of electors of the County each year in the face of the provisions of Section 387 of the Code of Alabama, 1923?

Answering your first inquiry, it is my opinion, construing Section 387, Code of Alabama, 1923, that the Judge of Probate is without authority to make new list and charge for the same after he has published his

list on the 15th day of April of any year. This is the only list he is authorized to publish except those names added to said list, which names so added shall be published in some newspaper of general circulation in said county on the 1st day of May of each year.

Answering your second inquiry the Judge of Probate is without authority to publish any list or supplemental list of the qualified voters of a county except those specifically provided for by Section 387, supra, and any such list so published would be without authority of law and void and certainly the county, through its constituted authorities, could not pay for the making of any such list other than those specifically provided for as stated above.

In answering the first and second question of your inquiry, I have also answered the third.

In this connection I am enclosing you an opinion of this office written April 25, 1932, to Hon. A. H. Glasgow, Judge of Probate, Cleburne County, which I think will aid you further in understanding the powers and duties of the Probate Judge in reference to these lists.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 19, 1932.

Hon. H. L. Stutts,
Judge of Probate, Lauderdale County,
Florence, Alabama.

Overseers—How appointed.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of September 9, 1932, in which you request my opinion as follows:

> Please give me an opinion by return mail if possible as to when the road year (Time for an overseer to serve and work a road) begins and ends.

The appointment of overseers and the length of time they may serve is regulated by Section 157 of the Highway Act of 1927 (General Acts 1927, p. 348). Here the commissioners courts, boards of revenue or other governing bodies of the counties are given very broad and almost unlimited

powers as to roads, bridges, etc., of the various counties which are under their supervision.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 20, 1932.

Hon. Pete B. Jarman, Jr.,
Secretary of State,
CAPITOL.

The State of Alabama entitled to eleven electors for election of next President and Vice-President of the United States, equal in number to two Senators and nine Representatives.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of March 28th, 1932, to hand. You state the following:

The Chairman of the State Democratic Executive Committee certified to your office the names of candidates for presidential electors from nine congressional districts to be nominated in the Primary election to be held May 3rd, 1932.

On certifying the names to the Judges of Probate you certified them in accordance with the congressional districts as they now stand and not in accordance with the congressional districts as they will stand on and after March 4th, 1933.

You ask my opinion as to whether the names of candidates for nomination as Presidential electors to be voted on for nomination in the primary election to be on May 3rd, 1932, should be certified according to the congressional districts as they now stand or as the congressional districts will be on and after March 4th, 1933.

In reply will say that, in my opinion, Alabama is entitled to eleven electors in the next electoral college for the election of a President of the United States for the presidential term beginning March 4th, 1933. Section 2 of Title 3, U. S. C. A. reads as follows:

"The number of electors shall be equal to the number of Senators and Representatives to which the several states are by law entitled at the time when the President and Vice-President to be chosen come into office; except that where no apportionment of Representatives has been made after any enumeration, at the time of choosing elec-

tors, the number of electors shall be according to the then existing apportionment of Senators and Representatives."

The number of Senators and Representatives to which the State of Alabama is by law entitled on March the 4th, 1933, the time when the President and Vice-President to be chosen come into office, is two Senators and nine Representatives.—Act No. 59, approved February 5th, 1931 (General Acts Alabama, pages 98-99). This Act was passed by the Legislature of Alabama by virtue of the fact that the apportionment of Representatives in the Congress had been made by Congress prior to the passage of said Act No. 59. Hence no state now falls within the exception. The Congress does the apportioning and not the Legislature of a state.

In certifying the names of candidates for electors from congressional districts the districts as provided by said Act No. 59 should be used.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 23, 1932.

Hon. S. R. Butler,
State Tax Commissioner,
CAPITOL.

A pipe line company engaged in transmitting natural gas through its pipe lines from a point in Louisiana, through the States of Mississippi and Alabama and on into the State of Georgia is engaged in interstate commerce and the State is not authorized in law to require of such company the license tax mentioned in Schedule 89 of the Revenue Act of Alabama approved Sept. 15, 1919.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your letter inquiring whether the State Tax Commission is authorized in law to require the Southern Natural Gas Company, (a company owning a pipe line running from Louisiana through Mississippi and Alabama and on to Atlanta) to pay the **State license tax** required of public utilities by Schedule 89 at page 427 of an Act of the Legislature of Alabama approved September 15, 1919, has been received. Your letter follows:

"The Southern Natural Gas Company is a company owning the pipe line running from Louisiana through Mississippi and Alabama and on to Atlanta, conveying natural gas to numerous points in the States named. The only distribution of this gas made by the Company in Alabama is to two subordinate companies, one of which is

the Alabama Natural Gas Company and the Central Public Service Company.

One of our License Inspectors has written us to ask if this Company is liable for a license under Schedule 89, Section 361, Acts 1919, page 282.

"This schedule, in explaining the sense in which the words 'public utility' are used, lists **gas companies** as being public utilities. However, at the time this schedule was enacted in 1919, there could not possibly have been in the minds of the Legislature a pipe line conveying natural gas. Gas companies at that time really meant companies manufacturing and distributing artificial gas and this fact has created a doubt in our mind whether the simple fact that the Southern Natural Gas Company may be termed a 'gas company' would be sufficient to establish liability. We have no information whether the general distribution of a product is necessary to establish a concern as being a public utility, and we shall be glad if you will at your earliest convenience advise us whether we shall demand the public utility license from the Southern Natural Gas Company.

"Possibly having some slight bearing on the question here asked is your opinion under date of February 4, 1930, rendered to this Commission."

The Act approved September 15, 1919, just referred to, is an Act: "To provide for the **general revenue** of the State of Alabama." The Act, of which Schedule 89 is a part, **is indeed and in fact a revenue raising measure and is in no sense a regulatory law.**

Schedule 89 provides that gas companies or heating companies or other public utilities shall pay to the State a **license tax** equal to two mills on each dollar of the gross receipts of such public utility for the preceding year. The question presented is whether this schedule applies under the facts stated in your letter, to the Southern Natural Gas Company.

This opinion is limited to the facts as conveyed by your letter. The facts stated in your letter, as I understand them, are as follows: The Southern Natural Gas Company is a company which owns a pipe line, through which natural gas flows. The pipe line starts or commences at a point in the State of Louisiana and runs through the States of Mississippi, Alabama and on to Atlanta, Georgia. Through this pipe line the Southern Natural Gas Company conveys, transmits or runs natural gas from the fields in Louisiana to points in Mississippi, Alabama and Georgia. So far as the State of Alabama is concerned, this gas line has only two outlets in this State, and distributes gas in this State only through two companies: Alabama Natural Gas Company and the Central Public Service Company. Your letter does not state whether the Southern Natural Gas Company sells its gas to the Alabama Natural Gas Company and the Central Public Service Company or whether the Southern Natural Gas

Company distributes the gas direct to the consumers. Neither does your letter state what connection there is between the Southern Natural Gas Company on the one hand and the Alabama Natural Gas Company and the Central Public Service Company on the other hand. This information might lead to a somewhat different conclusion, but I believe your specific question may be answered without this information.

As stated in your letter, it is extremely doubtful, whether, when the Act of September 15, 1919, was approved, the Legislature intended to enact a law affecting pipe lines conveying natural gas, and especially pipe lines conveying natural gas through three states. But I shall not deal with the intent of the Legislature in this regard, since the conclusions I have reached in answering your inquiry lead me to say that it is immaterial whether the Legislature did or did not have in mind this character of public utility.

The real question presented by your inquiry involves a construction of the commerce clause of the Constitution of the United States: Article 1, Section 8, Clause 3, To regulate commerce with foreign nations, and among the several states, and with the Indian tribes.

It is significant that the Congress of the United States in its amendment to the Act to regulate commerce (commonly referred to as the United States Commerce Act), has extended the provisions of that Act to persons or corporations engaged in the transportation of oil by pipe lines, and the United States Supreme Court says this is a valid exercise by Congress of its control over interstate commerce.

It cannot be denied that the Act of the Legislature of Alabama approved September 15, 1919, is a **revenue raising measure** and is in no sense a **regulatory law**. No question of rates is involved and no question of a franchise is involved. Neither is there any question involving the collection of a license tax from the distributors. There is no question of the license tax involved being a tax on the privilege to do business in Alabama. Neither is there a question of requiring an excise tax for the privilege of exercising a franchise in Alabama involved.

Boiled down to its last analysis the question resolves itself into this: Is the Southern Natural Gas Company, in running its natural gas from Louisiana through Mississippi and Alabama into Georgia, in the manner stated in your letter, engaged in interstate commerce?

The Supreme Court of the United States has repeatedly held that a pipe line transporting oil through its pipes from one State to another is engaged in interstate commerce. Under certain circumstances a State may collect a tax of a corporation or an individual engaged in interstate commerce. For example the Supreme Court of the United States has held that an excise tax upon a corporation for the privilege of exercising its franchise within a given state is not a burden on interstate commerce, but, there is no question of the exercise of franchise rights in your inquiry.

In my judgment, according to the facts stated in your letter, the Southern Natural Gas Company is engaged purely and simply in interstate commerce, as defined by the Supreme Court of the United States in various cases noted hereinbelow. It is my judgment that the transportation of natural gas through the pipe line beginning in Louisiana and running through Mississippi, Alabama and into Georgia is such commerce between the states as is contemplated by the commerce clause of the Constitution of the United States. In my judgment the State has no authority in law to require and collect the license tax required by Schedule 89 of the Revenue Act approved September 15, 1919. This Act is nothing more nor less than a Revenue Act with penalties provided for the violation of said Act. The collection of this license tax from the Southern Natural Gas Company would, in my judgment, be such a burden on interstate commerce as is prohibited. I do not think there is any doubt but that this question has been settled by the highest court in the land.

Both gas and oil are articles of commerce when severed from the soil, and when gas is carried from state to state, it is an article of interstate commerce, although carried in pipe lines, as much so as coal, iron ore or any other mineral; and no greater restriction can be laid upon it than can be laid upon solid minerals severed from the soil, or any other article of commerce. I do not mean to indicate that the states lose all control over such matters because it is interstate commerce. The Supreme Court of the United States has in a number of cases recognized the rights of the State to enact regulatory measures, in the exercise of its police powers. For example, it has been held by the Supreme Court of the United States that if the business taxed is in fact separate local business, not so connected with interstate commerce as to render the tax a burden upon such commerce, the tax is good. Likewise, it has been held by the Supreme Court of the United States that wherever a separation in fact exists between transportation service wholly within the State, and that between the states, a like separation may be recognized between the control of the State and that of the Nation or Congress.

While the piping of natural gas from state to state, and its sale and delivery to independent local gas companies, is interstate commerce, the retailing of the gas by the local companies to their consumers is intrastate commerce and is not a continuation of such interstate commerce, even though the pipe lines of the two companies may be connected permanently. Also, where local gas, destined for local consumption, is added to a pipe line carrying gas from another state, after it has crossed the state line, the gas to the extent so added is not interstate commerce and is subject to local regulation. I do not mean to indicate in this opinion that the license tax in question may not be required of and collected from the two distributing companies: The Alabama Natural Gas Company and the Central Public Service Company.

My conclusion is that the Southern Natural Gas Company in conveying its natural gas from Louisiana through Mississippi and Alabama and on into Georgia is engaged in interstate commerce; that, so far as

the collection of a license tax for the purpose of revenue is concerned, the State is without authority to collect such license tax from the Southern Natural Gas Company. It is my judgment that the courts would not uphold such an act on the part of the State. It is my judgment that the collection of such a license tax under the Revenue Law of 1919 would be construed as a burden on interstate commerce, and such a burden as is prohibited by the commerce clause of the Constitution of the United States, as construed by various decisions of the Supreme Court of the United States.

In support of this opinion I beg to refer you to the following authorities:

Vol. 1, 4th Edition, Thornton's Law of Oil and Gas, pp. 116 and 971;
Vol. 7, A. L. R. p. 1094 and cases cited therein;
Public Utilities Commission for the State of Kansas v. Kansas City, Mo. et al. 249 U. S. 236;
32 A. L. R. p. 300;
Crew, Levick Co. v. Commonwealth of Pennsylvania, 245 U. S. 292;
Vol. 2, 4th Edition, Thornton's Law of Oil and Gas, p. 1579;
Ozark Pipe Line Corporation v. Monier, et al. constituting the State Tax Commission of the State of Missouri, et al. 266 U. S. 555;
Eureka Pipe Line Company v. Hallahan, State Tax Commissioner, et al. 257 U. S. 265;
Part 2, Constitution, U. S. Code Annotated, p. 544, Note 266;
Part 1, Constitution, U. S. Code Annotated, page 138, and cases cited therein on "Natural Gas";
Peoples Natural Gas Co. v. Public Service Commission of Pennsylvania, 270 U. S. 550.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 23, 1932.

Hon. Eugene M. Hawkins,
Judge of Probate, Jefferson County,
Birmingham, Alabama.

1. Where a mortgage has been duly recorded and the filing tax paid, and, subsequently, an agreement in writing merely shortening the time for payment of the said mortgage debt is entered between the mortgagor and mortgagee, no filing tax is due the State on the filing of such agreement for record.

2. Where money for filing tax on agreement between mortgagor and mortgagee in regard to time of payment of mortgage debt has

been erroneously collected by the Judge of Probate, such money may be lawfully refunded.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of May 2nd was duly received. You state as facts:

> In November of 1928 Lucile M. Robinson executed and delivered to the Equitable Life Assurance Society a mortgage securing the indebtedness of $6,500.00, which mortgage was received and filed in Probate Office of Jefferson County and at which time the privilege tax of fifteen cents per hundred dollars was paid. According to the terms of the mortgage it was payable on a monthly basis and did not mature until 1941. In April 1932, the Mortgagor and Mortgagee entered into an agreement whereby the terms of the payment of the indebtedness secured by the mortgage would be changed (shortened), that is, that beginning February 1st, 1932, and semi-annually thereafter the interest and $162.50 on principal would be paid each six months up to and including February 1st, 1937, at which time the unpaid balance of the Mortgage indebtedness would become due and payable."

The filing mortgage tax was duly paid on filing the mortgage as originally drawn.

You ask my opinion:

1. Whether a filing tax was due on filing this new agreement as to dates of payment of interest and principal.

2. If wrongfully paid, on presentation of such agreement for record, can such money lawfully be refunded.

In reply to your first question will say that the answer to your inquiry is governed by what is the proper interpretation of subdivision (f) of Section 4½ of the 1923 Revenue Act, (Acts 1923, p. 155). This subdivision reads as follows:

> "(f) When the time for the payment of the indebtedness secured by any such mortgage, deed of trust, contract of conditional sale, or other instrument in the nature of a mortgage, is extended or renewed, and the extent or renewal contract is offered for record the tax required in this section shall be paid on the amount of indebtedness so extended or renewed; and the same shall be governed in all respects by the provisions of this subdivision. There shall be no advalorem tax collected on any such instrument, or the debt secured thereby which shall have paid the tax prescribed by this section, either State, county, or municipal."

In my opinion, the words "extended or renewed" both have reference to giving more time for payment,—one by written agreement extending the time of payment of the mortgage debt, the other by giving a new written obligation for the payment of the mortgage debt at a later date than that originally fixed in the mortgage contract.

These are the alternatives intended by the words: "extended or renewed." Such being my interpretation of the legislative intent in the use of the words "extended or renewed." I am of the opinion that no filing tax is required on filing the written agreement in question.

In answer to your second question will say that Sections 375 and 376 of the 1919 Revenue Act (Acts 1919, p. 445) provides the method for refunding money so paid.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 23, 1932.

Hon. M. M. Fountain,
Judge of Probate,
Monroeville, Alabama.

1. The deed filing tax provided for by Section 21½ of Act No. 163, approved July 22, 1927, allows deduction from the value of the land conveyed, on account of a mortgage the payment of which the grantee assumes, in cases, only, where the mortgage on the land conveyed has been filed for record and the mortgage filing tax has been paid.

2. The amount of the filing tax due in the case stated is estimated on the total value of the land conveyed. The amount of the mortgage debt assumed in this case cannot be deducted in estimating the amount of filing deed tax due on filing deed for record.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of August 17th to hand. You state the following as facts:

Deed was made conveying certain lands lying in Monroe County. The consideration expressed in the deed was one dollar and other valuable considerations. You state that "the other valuable considerations" was the assumtion by the grantee of the payment of a mortgage to the Federal Land Bank in the amount of Eighteen Hundred Dollars.

You desire my opinion as to amount of deed tax due by grantee on filing said deed for record .

In reply will say that the amount of the deed tax, due by the grantee on filing such deed for record is governed by the provisions of Section 21½ of Act No. 163, approved July 22, 1927 (Acts 1927, pages 163-4).

It is well to keep in mind that it is the value of the property conveyed and not the consideration expressed in the deed, which controls the amount of the filing tax due on presentation for filing for record. The recited consideration may be the real consideration and the real value of the land conveyed or it may not. But, assuming the recited consideration was the real value of the land conveyed, that is, one dollar and the assumption of the payment by the grantee of a mortgage to the Federal Land Bank of eighteen hundred dollars, making the total value of the land conveyed $1,801.00, then the proper amount of filing tax due by the grantee on filing such deed for record is fifty cents on each five hundred dollars or fraction thereof contained in $1,801.00. Under the condition stated the filing tax on such deed is two dollars.

There is no deduction for the amount of the mortgage assumed by the grantee in the case stated, for the reason that no filing tax is paid by the Federal Land Bank on filing a mortgage for record.—Section 21½ of Act No. 163, approved July 22, 1927.

The deduction of the amount of the mortgage debt on the land, the payment of which the grantee has assumed, is allowed in cases, only, where the mortgage has been filed for record and mortgage filing tax thereon has been paid.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 23, 1932.

Hon. John R. Matthews,
Register in Equity, Montgomery County,
Montgomery, Alabama.

The requirement in Section 50 of Compiled Acts, 1929, that "the owner of the property must give bond to be approved by the Register of the Circuit Court, leaves it in the judgment and discretion of the Register as to whether or not surety to such bond shall be required.

Opinion by Assistant Attorney General Evans.

Dear Sir:

Your letter of August 12th came duly to hand. You direct my attention to the following provision in Section 50 of the Revenue Laws as compiled 1929;

> "In addition to the filing of notice of appeal, the owner of such property must give bond to be approved by the Register of the Circuit Court of Montgomery County, to cover the amount of taxes as would be due under said final assessment, payable to the State of Alabama and conditioned to pay such judgment as may be rendered against it in the Circuit Court."

You ask my opinion as follows:

> Do these words "must give bond" mean that the owner of the property must give bond with a surety or sureties? Has the Register legal authority, if he deems the bond submitted by the owner of the property without a surety or sureties, good and sufficient, to approve the bond?

In reply to your inquiry will say that the requirement for bond in the case mentioned by you is entirely statutory. There is nothing said in the statute about requiring sureties. If the Register deems the bond of the taxpayer for appeal sufficient without surety or sureties, he may, in my opinion, approve the bond. If the Register does not deem the bond without surety or sureties sufficient, he should require satisfactory surety to such bond.

In cases where the Legislature deems surety to bond necessary, it requires, by statute, bond with surety. In other cases, as the one under consideration, the Legislature may leave the discretion to the approving officer, to be exercised where he deems proper.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 23, 1932.

Hon. John D. Petree,
Judge of Probate,
Russellville, Franklin County, Ala.

No additional license required for three additional warehouses in which are stored less than five thousand bales of cotton, the overflow being temporary.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

I beg to acknowledge receipt of your letter of November 21st, as follows:

> "We have in this city a bonded cotton warehouse with a capacity of two thousand bales or less. The operators have qualified with the State Board of Agriculture by filing the required bonds. They have also taken out a Cotton Warehouse State and County License under Schedule 182 Revenue Code. Their State and County License is for a warehouse storing not more than 5,000 bales. Since the Government is giving credit on seed loans of 8 cents per pound on all cotton stored in bonded warehouses, this warehouse has an overflow and the operators have obtained three other buildings temporarily for the storage of the cotton and until some can be moved.
>
> "Please advise me if these people, under the above statement of facts, would be required to take out an additional State and County License for each of the three small places which they are using when the total storage is less than five thousand bales and all the business is operated and handled from one office in the main warehouse."

In my judgment, under the facts stated in your letter, no additional State and County license would be necessary. Schedule 182 found at page 314 of the Revenue Laws of Alabama of 1929, provides:

> "Schedule 182. Warehouse—cotton.—For each person, firm or corporation operating a warehouse or yard for the storage and hauling of cotton for compensation a license tax to the State as follows: Every such warehouse storing not more than five thousand bales in any one year, ten dollars; more than five thousand and not more than ten thousand bales, twenty-five dollars; more than ten thousand and not more than twenty thousand bales, fifty dollars; more than twenty thousand and not more than thirty thousand bales, seventy-five dollars; more than thirty thousand bales, one hundred dollars."

The cotton stored in the warehouses at Russellville amounts to less than five thousand bales. In my judgment, the five thousand bale provision is the test. I think it is immaterial that one, two or three warehouses be used in storing the cotton, so long as there are not more than five thousand bales stored. Moreover, you state that all the business is operated and handled in the main warehouse. In my judgment, no additional license will be required for the three additional buildings temporarily used for the storage of the cotton.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 23, 1932.

Hon. Hugh White, President,
Alabama Public Service Commission,
Montgomery, Alabama.

Construction of subsection 2 of Section 6 and subsection 3 of Section 7 of an Act approved July 28, 1931, which Act amends certain sections of the Alabama Securities Act of 1923.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

Your inquiry relating to subsection 2 of Section 6 and subsection 3 of Section 7, at pages 791 and 793 of an Act of the Legislature of Alabama, approved July 28th, 1931, has been received.

The two subsections mentioned above are a part of an Act of the Legislature of Alabama of 1923, amending Sections 9890 and 9891 of the Alabama Securities Act as found in the Code of 1923. It is well that the wording of subsection 2 of Section 6 and subsection 3 of Section 7, be carefully noted. Subsection 2 of Section 6 provides:

"(2) Cancellation of Registration of Securities; Discharge From Filing Reports. Any issuer, whose securities have been granted registration as provided in Section 9887 of the Code of Alabama, 1923, as herein amended, who has completed the sale of the securities so registered, or who desires to discontinue the sale of said registered securities, and who desires to be discharged from further supervision of the commission or from further compliance with the Alabama Securities law, may file with the commission a notice in writing to such effect, and the commission shall thereupon enter an order cancelling the registration of such securities, and such issuer shall thereupon be discharged from filing any financial report except as the commission may require up to and including the date of the filing of said notice as hereinabove provided. Whenever any security or securities theretofore granted registration by the commission in the Register or Qualified Securities, has or have become, under the provisions of Section 9879 of the Code of Alabama, 1923, as amended by Senate Bill 415, Alabama General Laws of 1927 and as hereby amended, securities to which the provisions of the Alabama Securities Act are made inapplicable, the commission shall, upon due proof of this fact to its satisfaction and upon application by the person who originally filed the application for the registration of said securities, or the successor to such person, enter an order cancelling the registration of said securities and discharging such person from the requirement of filing further reports with the commission."

Subsection 3 of Section 7 provides:

"(3) Revocation of Registration of Securities.—The commission shall revoke the registration of any security by entering an order to that effect, with its findings in respect thereto, if upon examination into the affairs of the issuer of such security as provided by subdivision (2) hereof it shall appear to the commission and the commission shall find (a) That the assets of any issuer, whose securities have been granted registration in the Register of Qualified Securities, are impaired to such an extent that such assets do not equal seventy (70%) per centum of its total liabilities, including its total stock liabilities reckoned upon the price at which such stock has been sold by such issuer to, or subscribed for by, the subscribers thereto; or (b) That the issuer has violated any of the provisions of this Article or any orders of the commission, or any terms or terms thereof, or has failed to comply with any condition or conditions contained in any order of the commission within the time limit therein prescribed; or (c) That the issuer has been or is engaged in or is about to engage in a fraudulent transaction or fraudulent transactions relating to or in connection with the sale of any securities, or (d) That the issuer is in any other way dishonest or has made any fraudulent representation or representations in any prospectus or in any circular or other advertising or literature that has been distributed concerning the issuer or its securities; or (e) That the issuer is insolvent; or (f) That said issuer has declared and/or paid dividends out of anything except the net earnings of said issuer actually received and/or accrued at the time of the declaration thereof, and/or out of accumulated surplus. This paragraph (f) shall not apply to liquidating dividends legally declared and distributed and so specifically designated in connection with the distribution thereof. In making such examination, as provided by subdivision (2) hereof, the commission, its deputy or the accountant or accountants of the commission shall have access to and may compel the production of any or all of the books and papers of such issuer, and may administer oaths to and examine the officers of such issuer or any other person connected therewith as to its business and affairs or in lieu of such examination the Commission may require a balance sheet exhibiting the assets and liabilities and/or a trial balance sheet of the business, and/or the income statement, and/or any other information the Commission may deem necessary, any and all of which shall be made and certified by a public accountant selected by the issuer from a list of public accountants approved by the Commission, or by any other public accountant first approved by the Commission."

Your specific inquiry follows:

(1) Would the Commission be bound under the "Cancellation and Discharge subsection," and would it be mandatory upon the Commission to "enter an order cancelling the registration of such securities, and such issuer shall thereupon be discharged from filing any finan-

cial report . . . etc."; thus in effect saying that no grounds of revocation have been found to exist, and thereby in effect giving such issuer what will be taken as a "clear bill of health?"

(2) Or, would the Commission, under the facts and circumstances be bound, under the "Revocation subsection" to revoke the registration of said securities, thereby putting the already stockholders and future stockholders on notice that there has been found to exist in the case of such issuer one of the grounds so set out as mandatory reasons why the registration of such issuer's securities should be revoked.

In answering your inquiry I have considered carefully each and every provision of the Alabama Securities Act as found in the Code of 1923, as amended by the Legislature of 1931.

Your inquiry raises questions of statutory construction. In my judgment two principles of statutory construction are involved. Under a certain state of facts the two subsections would not conflict. Under a different state of facts the two subsections would conflict, one with the other. Under a state of facts bringing about a conflict, subsection 3 of Section 7 would control. Under a state of facts in which no conflict exists, both subsections would have a field of operation. Under a certain state of facts subsection 2 has a field of operation, and under a different state of facts subsection 2 must undoubtedly yield to subsection 3. Under the following state of facts subsection 3 would control: An issuer whose securities have been granted registration and who has completed the sale of such registered securities, or who desires to discontinue the sale of such registered securities, and who desires to be discharged from further supervision of the Commission or who desires to be discharged from further compliance with the Alabama Securities Law, files with the Commission a notice in writing to such effect, and the Commission thereupon requires such issuer to file a financial report, complete, up to and including the date of the filing of said written notice by the said issuer. The Commission accepts such notice and examines the report. The report reveals that one of the six grounds set out in subsection 3 of Section 7 exists. Then, and under this state of facts subsection 2 of Section 6 must yield to subsection 3 of Section 7, and subsection 3 would be controlling, and subsection 2 would become inoperative and of no effect.

But let us suppose, on the other hand, that an examination of the report shows that none of the (a, b, c, d, e, and f,) six grounds mentioned in subsection 3 exist. Then, and under this state of facts, subsection 2 would have a field of operation and the Commission could not refuse to grant the cancellation and discharge provided in subsection 2 of Section 6. Moreover, it is my judgment that the Commission, under the Act as a whole, has ample authority and power to require such issuer (applicant for cancellation and discharge) to furnish such a financial report as will enable the Commission to ascertain accurately whether any of the six grounds mentioned in subsection 3 exist. When an issuer applies for can-

cellation and discharge under subsection 2 of Section 6, it is my judgment that the Commission should ask itself this question: "Is this issuer, under the law, entitled to cancellation of his registered securities and a discharge from a compliance with the Securities' Laws of Alabama?" It appears that the six grounds set out in subsection 3 of Section 7 furnish the yardstick. I do not mean to indicate herein that the Commission may go beyond the six grounds enumerated in subsection 3. Suppose an issuer should apply for cancellation and discharge under subsection 2 and the Commission should have ample knowledge and notice that the issuer has not complied with at least three of the grounds set out in subsection 3? Under these circumstances, would the Commission, with the full knowledge of the facts, be authorized in granting the discharge and cancellation? To so hold would, indeed, furnish but little protection to the public, and in a measure, certainly, the object and purpose of the Securities Laws would be destroyed. It will be noted that subsection 3 is mandatory. Subsection 3 provides that the Commission **shall** revoke **any** security in cases where **any** of the six grounds exist. If the Commission is satisfied that the applicant for cancellation and discharge under section 2 can pass the requirements set forth in (a), (b), (c), (d), (e), and (f) of subsection 3, then the Commission should grant the cancellation and discharge. I do not think subsection 2 contemplates that the issuer is entitled to cancellation and discharge unless the facts support his request. To hold that the written notice and the filing of the financial report, without more, entitles the issuer to cancellation and discharge is, in my judgment, to construe this law in a way never contemplated by the Legislature. The Legislature, in my judgment, did not intend that an issuer perform a merely perfunctory act, and that thereupon he would be entitled to cancellation and discharge.

I beg to refer you to the following authorities in support of this opinion:

Hand v. Stapleton, 135 Ala. 156, 33 So. 689;
Hand v. Stapleton, 140 Ala. 555;
Hand v. Stapleton, 145 Ala. 118;
Ex parte Thomas, 113 Ala. 1, 21 So. 369;
Williams, Probate Judge v. State ex rel Schwartz, 197 Ala. 54;
Marengo Co. v. Wilcox Co., 215 Ala. 640;
Davis v. State, ex rel County Board of Equalization of Cherokee County, 16 Ala. App. 397;
Word v. State ex rel Parker, et al. 154 Ala. 227;
State v. Burchfield Bros., 211 Ala. 30;
Mitchell v. State, 141 Ala. 90;
Board of Commissioners of Mobile v. Moore, 108 So. 568, 214 Ala. 525;
33 Am. & Eng. Ency. c. Law 1st ed., pp. 310, 311;
Endlich on Interpretation Stat., Sec. 133;
Joseph & Randolph, 71 Ala. 499;

Standard Oil Co. v. State, 78 Ala. 400, 59 So. 667;
Vol. 25 R. C. L. 1007, Sec. 247, No. 7 and cases there cited.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 30, 1932.

Hon. Pete B. Jarman, Jr.,
Secretary of State,
CAPITOL.

Holidays—Statutory legal holidays not changed by House Joint resolution, but holiday designated by said resolution may be observed.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of September 16, 1932, in which you inquire as to the effect of House Joint Resolution 255 (Acts 1931, page 820) officially designating October 12th as a holiday, to be known as Columbus or Fraternal Day.

Said resolution provides as follows:

"No. 689, H. J. R. 255, Robinson, HOUSE JOINT RESOLUTION. Be it resolved by the house, the senate concurring, that Oct. 12th be officially designated as a holiday, to be known as Columbus Day and Fraternal Day. Approved July 30, 1931."

Section 9215, Code of Alabama, 1923, provides that certain days shall be holidays, among which the second Tuesday in October is designated as Fraternal Day. Said section further provides that if any paper entitled to days of grace, by the allowance thereof, or subject to protest, becomes due on a holiday, it must be taken as due on the next succeeding business day. The days designated as in said section are deemed legal holidays.

A holiday may be created by general acceptance or observation, although it may not become a legal holiday without statutory sanction.—**29 Corpus Juris 762.**

A resolution of either or both Houses of the Legislature is not a law. —**Biennial Report of Attorney General,** 1926-28, p. 138.

Since a **legal holiday** cannot be created without statutory sanction and since a resolution does not have the effect of law, I am of the opinion that the resolution above quoted in no wise affects Section 9215, Code of Alabama, 1923.

In other words, the said resolution does not make October 12th, to be known as Columbus and Fraternal day a **legal holiday** in lieu of the second Tuesday in addition, known as Fraternal day; but it does officially designate October 12th as a holiday though not a legal holiday, which may nevertheless be observed.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 30, 1932.

Hon. J. F. Smith,
Clerk of Circuit Court,
Brewton, Escambia County, Alabama.

Clerk of jury board—how paid.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of August 31, 1932, in which you request my opinion as follows:

"I will thank you to please render me your opinion on the following:

"Should the Judge of Probate issue warrant to the Clerk of the Jury Board for services rendered? Or should the county depository pay an order to the Clerk of the Jury Board from the President of the Jury Board?

"There seems to be some confliction as to Section Eight (8) on page 57 of the General Acts of 1931 with reference to payment of the Clerk of the Jury Board. Under Section five (5) on page 56 of the General Acts of 1931 members of the Jury Board must be paid by the Judge of Probate, but in the same Act under Section Eight (8) no provision in this manner is made for the clerk of the board.

"Your opinion as to whom should draw this warrant for the clerk of the Jury Board will be very much appreciated."

I am unable to find any conflict between Section 5 and Section 8 of the Act approved February 20, 1931 (General Acts 1931, p. 55). Section 5, supra, provides for the payment of the members of the Jury Board, and Section 8, supra, provides for the payment of the clerk of the Jury Board.

The former is by warrant of the Probate Judge and the latter is upon the order of the President of the Jury Board.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 30, 1932.

Hon. Jake Oppenheimer,
President, Board of Revenue,
Eufaula, Barbour County, Alabama.

The rule that a State has no authority to tax personal property of a national bank, means that such property must be owned entirely and exclusively by the bank, and does not mean that a national bank is not liable for personal property it may hold for the purpose of security; an insolvent national bank holding personal property for security purposes is liable for taxes on such personal property.

Opinion by Assistant Attorney General Carmichael.

Dear Sir:

My attention has been called to an opinion rendered by this office on February 1, 1932, in answer to your letter of January 19, 1932. Your attention is invited to your letter and my answer thereto.

Through inadvertence a part of the prepared opinion was not included in the opinion actually mailed to you. In fact, only one-half of the prepared opinion was mailed to you. I regret this error. The part you received discussed generally the right of the State to tax the personal property of a national bank, and the authorities cited therein are in support of the broad and well known principle that a State is not authorized in law to tax the personal property of a national bank.

The reference, in the opinion you received, to personal property is reference to such personal property a national bank owns **entirely and exclusively** and not to personal property held by such bank for security purposes. In this part of the opinion the remaining proposition will be discussed, viz: The right of the State to tax personal property held by national banks for the purpose of security. This remaining part of the opinion is to be construed in connection with the opinion dated February 1, 1932. It was my intention to discuss both propositions in the former opinion. It was not my intention in the opinion dated February 1, 1932, to hold that the State is without authority in law to tax personal property held by national banks for the purpose of security.

The constitutional inhibition against taxation by a State of the personal property of a national bank, does not apply to personal property held

by national banks for purposes of security. It is not necessary to decide the exact character of the interest of the bank in the personal property mentioned in your letter. What is decided is that, whatever its interest, the personal property was and is held merely for security and that the bank has not become the unconditional and exclusive owner of such personal property.

Generally speaking, the law frowns upon the acts of a national bank when such national bank buys, trades in and deals in ordinary personal property. Indeed, such a transaction on the part of a national bank would be ultra vires. A national bank has absolutely no power to buy, trade and deal in ordinary personal property. This is not to say a national bank may not, under some circumstances, become the owner of ordinary personal property. Such ownership is authorized when the bank obtains such property for its financial protection, and growing out of legitimate transactions. Such a bank may take a mortgage or pledge of personal property, and if for its protection it is required to take over the personal property the law will not forbid such an act.

It is my judgment that the facts stated in your letter do not change the rule. Under the facts stated in your letter, it is my judgment that the National Bank in question cannot be heard to say it does not owe the taxes on personal property pledged to it in a mortgage. Your statement that personal property mortgaged to a national bank is not liable for taxes is incorrect. Insolvent national banks are not required to pay taxes on personal property owned entirely, unconditionally, and exclusively by such insolvent national banks, but this rule does not apply to personal property pledged to such a bank in a mortgage.

It is my judgment that the bank is liable for the taxes on the personal property in question.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 30, 1932.

Dr. J. N, Baker,
State Health Officer,
CAPITOL.

The legitimate County debts or obligations are of two classes:

(1) Those which are prescribed and imposed by law and are purely involuntary as to a County;

(2) Those which are merely authorized by law, and may be assumed by the County when the condition of the County Treasury will admit of it.

To the second of the above classes belong provision for the County Health Department.

Opinion by Assistant Attorney General Evans.

Dear Sir:

In your letter of September 9, 1932, you ask my opinion upon the following point:

> "In the face of a constitutional limit of indebtedness, how may a County provide for a County Health Department?"

In reply will say that I presume that you have reference to how the County may do so under the general law as it now is.

In Section 231 of the 1923 Code as amended by Act No. 276, approved July 18, 1931, there are enumerated the preferred claims of the first class. The last sentence of said Section 231 reads as follows:

> "For the payment of the above recited claims, in the order named, it shall be the duty of the County Treasurer or custodian of County funds to set apart a sufficient fund from the moneys of the County, and he and his official bond shall be held liable for a failure so to do, insofar as the funds of the County make it possible for him so to do."

There are certain other County debts or obligations imposed by law which have been termed by the Supreme Court as preferred claims of a second class. For instance, where a County is required by an Act of the Legislature to pay the salary of a County officer, or other claim, not enumerated in Section 231 of the Code, or otherwise made a preferred claim of the first class.

Brown, Treasurer, v. Gay-Padget Hdw. Co., 188 Ala. 423.

The providing for and payment of both of these classes of claims against the County are purely involuntary so far as the Court of County Commissioners, or other governing body of like kind, is concerned, provided the revenues of the County in the fiscal year are sufficient to meet them.

Besides such debts as are preferred claims, the providing for and payment of which are involuntary on the part of the Court of County Commissioners, or other like governing body, there are others merely authorized by law when the state of the County Treasury will admit of it. Among the matters which are merely authorized by law, in case there is, or will be, during a current fiscal year, more money in the County Treasury than is necessary to pay the preferred claims, is that provided by subsection 20 of Act No. 622, approved July 31, 1931. Said subsection reads as follows:

"To appropriate money to promote or enforce the health and quarantine laws of the State for the benefit of the County and its inhabitants, when requested so to do by the State Board of Health."

There are several other provisions for aid by the County in said Act No. 632, the granting of which is purely voluntary by the Court of County Commissioners, when the condition of the County Treasury will admit of it; but, if, at any time, the indebtedness of the County has reached its constitutional limit as provided by Section 224 of the Constitution, and there will not be in the County Treasury during the then current fiscal year, more than enough to meet the payment of the preferred claims of the first and second classes as above named, the Court of County Commissioners, or other like governing body, cannot legally appropriate to any matters of the class voluntary with such Court. In other words, the Court of County Commissioners, or other like governing body, cannot, at any time legally make the indebtedness of the County greater than three and a half per centum of the assessed taxable property of the County. If at any time such Court attempts to do so, the amount in excess of three and a half per centum of the assessed value of property of the County is void and cannot be enforced by any Court proceeding.

Each fiscal year begins with the taxes and charges due the County for that fiscal year to be collected and used for the governmental expenses of that fiscal year. One of the expenses of that fiscal year is all interest on money or debts due by the County during that fiscal year, which cannot legally be more than the interest of an amount equal to three and one half per centum of the assessed value of the property in said County. The payment of this interest is one of the preferred claims. Besides this, some other preferred claims of the first and second class.

If during a fiscal year there will be more money in the County Treasury than is sufficient to meet these preferred claims, then the Court of County Commissioners, or other like governing body, may consider as to which of the matters, merely authorized by law, and about which it may use discretion, it will devote any or all of such surplus. One of these matters which is voluntary with the Court of County Commissioners is:

"To appropriate money to promote or enforce the health and quarantine laws of the State for the benefit of the County and its inhabitants, when requested so to do by the State Board of Health."

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

September 30, 1932.

Hon. J. H. Stewart, Clerk,
House of Representatives,
CAPITOL.

Statutes—Act No. 38, S. B. No. 1, approved Sept. 27, 1932, became effective on the date of approval by the Governor.

Opinion by the Attorney General.

Dear Sir:

I have your letter of September 29th, 1932, in which you wish to be advised as to the effective date of Act No. 38, S. B. No. 1, approved September 27th, 1932, amending Section 1 of Act No. 13, H. B. No. 60, approved January 28, 1927, (General Acts 1927, p. 26), said amending act having the effect of reducing the maximum expense allowance of Members of the Legislature from $4.00 to $3.00 per day. In connection therewith you also wish to be advised when the last day of the $4.00 expense allowance should be paid and the first day that the $3.00 expense allowance should be paid.

In answer to your inquiry I am of the opinion that Act No. 38, S. B. No. 1, became effective on the date of the Governor's approval, i. e. Sept. 27, 1932, I am also of the opinion that September 27, 1932, is the last day on which the $4.00 per day allowance is payable, the $3.00 per day allowance becoming effective September 28, 1932.

The Act in question contains no provision whatsoever as to when same shall become effective. It is a settled law in this State that statutes go into effect immediately upon their approval by the Executive, unless otherwise specifically provided in the act. In other words, statutes are in full force from the date of their approval when no time is fixed for them to take effect.

State ex rel Jones vs. Stearns, 200 Ala. 405, 76 So. 321;
Montgomery Traction Co. vs. Knabe, 158 Ala. 458, 48 So. 501;
Turnipseed vs. Jones, 104 Ala. 593, 14 So. 375.

Yours truly,
THOMAS E. KNIGHT, JR.,
Attorney General.

SOLICITOR'S REPORTS

GENERAL SUMMARY OF CASES OF CIRCUITS, 1930-1932.

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Abandonment	4	4						1		4
Abortion	2				2					
Abusive language	307	149	34	113	12			54	4	91
Adultery	73	24	8	31	9		3	20		5
Affray	16	7	2	4	3			7		
Aiding an escape	3	2	1				1	1		
Aiding felon to escape	8	3	1	1	3		3			
Arson	108	45	25	37	2		38	4		3
Assault	22	9		10	1			6		3
Assault and battery	833	519	77	206	27		3	276	18	222
Assault and battery with weapon	182	137	18	14	2			64	2	95
Assault to murder	649	340	99	186	24		269	37	1	31
Assault to ravish	57	24	6	24	3		18	5		1
Assault to rob	26	16	1	8			15	1		
Assault with weapon	168	122	12	26	6		2	71	1	48
Assault National Guard	2	2								2
Attempt to bribe	2			1	1					
Attempt to commit burglary	12	10			2			6		4
Attempt to commit felony	33	23	3	7				19	4	
Attempt to aid escape	2	2						1		1
Attempt to break jail	6	5					2	2		1

Attempt to distill	203	197	4	2			16	50	2	129
Attempt to forge	3	3						3		
Attempt to rob	2	2						2		
Attempt to transport liquor	3	3						2		1
Bail forfeiture	9	1		2						3
Bastardy	144	45	26	55	18		4	28		11
Bigamy	35	22	1	7	5		21	1		
Blackmail	5	2		3					2	
Breach of peace	6			6						
Bribery	23			16	7					
Bringing stolen property into State	2			2						
Burglary	1547	1209	94	182	58		1180	23		4
Burglary and grand larceny	414	213	38	145	18		204	7		2
Burglary of railroad car	6	5		1			3	2		
Burning forest	3	1		2						1
Buying cotton after dark	2	1		1						1
Buying and concealing stolen property	54	31	1	22			15	15		1
Carnal knowledge	119	42	17	54	5		41			
Carrying concealed weapon	329	166	44	98	20			90	3	91
Changing name	3	2	1							2
Compounding felony	1			1						
Concealing stolen property	63	41	4	16	2		24	5	1	7
Conspiracy	7	5		2	3		1	3		1
Contempt of court	2	1		1					1	
Contributing to delinquency of minor	3	1		2						1
Criminal provocation	3	2		1						2
Crime against nature	3	2	1				2			
Cruelty to animal	10	5	3	1				4		1
Decoying child	5	1	1	2	1					1
Defacing public building	8	4	2	2				2		2

GENERAL SUMMARY OF CASES OF CIRCUITS, 1930-1932—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Peniten-tiary	Hard Labor	Jail	
Defamation	12	3	3	5	1			1		2
Desertion and non-support	54	15	10	28	1		1	11		3
Destroying a lien	1			1						
Destroying property	12	4	4	4				1		3
Destroying public records	4		4							
Detaining female	3			3						
Discharging firearms unlawfully	2	2	2					2		1
Disposing of mortgaged property	173	28	37	91	17		3	12		13
Disposing of property under lien	44	14	3	20	6		11	1	1	1
Distilling	1656	1118	204	294	47		1066	24		20
Disturbing assemblage of people	1	1								1
Disturbing religious worship	73	27	16	23	7			8		20
Disturbing school	4	2		1	1			1		1
Ditsurbing woman	5	5								5
Driving while intoxicated	143	72	13	49	11		1	46	2	23
Embezzlement	248	40	19	179	10		20	15	2	3
Escape	50	41		4	5			26		17
Failure to work road	13	6	3	6	1					6
False affidavit	2	2								2
False pretense	247	83	29	110	21		41	19	2	21
Falsifying records	1		1							

Forgery	487	278	24	126	60		209	48	16	5
Fornication	2	1	1				1			
Fraud	6	1	1	5						1
Gaming	87	37	11	39				6		33
Grand larceny	1686	1126	158	346	60		1053	52	5	6
Grand larceny and embezzlement	1	1					1			
Grand larceny and receiving stolen property	56	31	3	22			26	2		3
Habeas corpus	1			1						
Homicide	497	322	105	59	11	4	293	17	5	3
Impersonating falsely	1	1						1		1
Incest	6	2	2	2			2			
Influencing jurors	3			3						
Injury to property	10	6	2	2						6
Interfering with labor	1			1						
Intimidating witness	2	1		1				1		
Keeping gaming table	4	2	1	1						2
Kidnaping	8		1	7						
Killing dog	1				1					
Larceny	7	6	1					2		
Leaving wreck without stopping	11	4	5	4	1					3
Libel	2			2						
Malicious injury to animal	22	5	7	8	2			2		3
Malicious injury to property	36	20	3	12	1		1	10	2	7
Malicious mischief	15	8	1	6				2		6
Manslaughter	117	103	9	8	2		85	11		6
Mayhem	5	3		2			3			
Miscegenation	7	4		3			4			
Murder	211	136	35	35	6	10	124	2		
Non-support	20	9	6	5			1	7		1
Obscenity	1	1								1

GENERAL SUMMARY OF CASES OF CIRCUITS, 1930-1932—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Obscene language	51	15	6	16	14			11	1	3
Obstructing railroad track	1			1						
Offenses not specified	80	28	6	47	4			22		6
Operating slot machine	51	29	1	20	1			1		28
Peace proceedings	5			5						
Perjury	41	16	2	15	6		15			
Permitting minor to play pool	2	1		1						1
Petit larceny	951	657	72	209	24		16	465	53	155
Possessing liquor	41	16	15	10				12		4
Possessing still	76	58	6	11	1		56			1
Practicing dentistry without license	1				1					
Practicing medicine without license	15	4	1	10						4
Presenting firearms	47	18	7	19	3			6		11
Public drunkenness	321	186	14	117	4		1	45	1	133
Rape	58	11	14	9	4	2	7	2		
Receiving stolen property	93	45	6	37	5		17	20	2	6
Reckless driving	242	100	43	79	20			39	9	52
Removing property under lien	4	2		2			1			
Resisting arrest	8	5	1	2				1		1
Resisting officer	33	7	3	21	2			8		2
Robbery	256	156	38	54	8	3	135	13		

Seduction	47	9	4	25	9	.....	8	.....	.....	.....
Seining	12	1	4	7	.....	.....	.....	.....	.....	1
Selling property under lien	11	2	4	4	.....	.....	1	.....	.....	1
Shooting along highway	4	2	.....	2	.....	.....	.....	.....	.....	2
Shooting into dwelling	9	6	.....	1	.....	.....	.....	4	.....	3
Sodomy	5	1	1	2	1	.....	.....	1	.....	.....
Temporary use of property	10	7	1	1	3	.....	.....	6	.....	2
Throwing into dwelling	1	.....	.....	1	.....	.....	.....	.....	.....	.....
Throwing into railroad train	2	2	.....	.....	.....	.....	.....	.....	.....	2
Transporting five gallons or more of whiskey	37	24	2	9	2	.....	22	.....	.....	2
Transporting whiskey	328	198	28	87	12	.....	179	16	.....	3
Trespass	76	24	16	35	1	.....	.....	13	1	11
Unlawfully cutting timber	1	.....	.....	1	.....	.....	.....	.....	.....	.....
Unlawfully killing cow	1	1	.....	.....	.....	.....	.....	.....	.....	1
Unlawfully marking animals	1	.....	.....	1	.....	.....	.....	.....	.....	.....
Unlawfully riding train	3	3	.....	.....	.....	.....	.....	2	.....	1
Using auto without owner's consent	28	24	2	3	.....	.....	.....	16	1	7
Vagrancy	200	53	16	114	18	.....	.....	33	.....	21
Violating agricultural code	41	.....	.....	41	.....	.....	.....	.....	.....	.....
Violating auto law	61	31	7	20	3	.....	1	19	3	8
Violating banking law	80	6	3	62	9	.....	6	.....	.....	.....
Violating blue sky law	1	1	.....	.....	.....	.....	1	.....	.....	.....
Violating check law	151	58	18	70	6	.....	.....	31	.....	26
Violating child labor law	3	1	.....	2	.....	.....	.....	.....	.....	1
Violating election law	29	2	1	25	1	.....	.....	1	.....	1
Violating game law	241	56	56	117	11	.....	5	15	.....	36
Violating health law	11	3	.....	8	.....	.....	.....	2	.....	.....
Violating highway law	26	11	5	8	1	.....	.....	6	.....	5
Violating license law	75	43	8	10	14	.....	.....	21	.....	22
Violating motor carrier act	2	.....	.....	2	.....	.....	.....	.....	.....	.....

GENERAL SUMMARY OF CASES OF CIRCUITS, 1930-1932—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Peniten-tiary	Hard Labor	Jail	
Violating narcotic law	4			4						
Violating prohibition law	2584	1215	314	908	146		50	624	18	527
Violating rent contract	6	1		5						1
Violating revenue law	236	33	3	195	4		5	3		25
Violating road law	27	7	5	15				1		6
Violating sanitary law	1				1					
Violating school law	4			4						
Violating section 51 state code	1			1						
Violating section 86 state code	2	2								2
Violating section 88 state code	5	1	2		2					1
Violating section 90 state code	1			1						
Violating section 91 state code	12			11	1					
Violating section 3298 Code 1923	1	1								1
Violating stock law	15	3	3	8				3		
Violating Sunday law	17	8	2	7						8
Violating timber law	8	2	2	4				1		1
Totals	18391	10217	1990	5318	848	19	5337	2605	163	2136

Percentatge of convictions, 55.55. Predominant crime, violtaing prohibition law.

GENERAL SUMMARY OF CASES IN CIRCUITS

FIRST CIRCUIT										
Choctaw County	124	56	17	23	25		33	5		21
Clarke County	184	103	23	48	9		27	19		59
Washington County	123	60	30	11	22		25	19		16
Totals	431	219	70	82	56		84	43		96
SECOND CIRCUIT										
Butler County	164	109	9	46		1	42	41		23
Crenshaw County	152	83	16	50	3		26	46		10
Lowndes County	102	62	4	30	6	3	34	21		5
Totals	418	254	29	126	9	4	102	108		38
THIRD CIRCUIT										
Barbour County	192	122	31	39			62	19		41

GENERAL SUMMARY OF CASES IN CIRCUITS—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Bullock County	94	57	13	21	3		41	9		7
Dale County	143	94	20	29			32	9		53
Russell County	314	147	76	59	32		53	36	4	54
Totals	743	420	140	148	35		188	73	4	155
FOURTH CIRCUIT										
Bibb County	174	129	4	29	12		62	32	2	57
Dallas County	335	240	15	52	28	1	144	45	11	79
Hale County	239	160	5	71	3	1	66	38	5	84
Perry County	175	107	12	36	20		55	26	3	41
Wilcox County	162	104	2	18	38		54	27	3	37
Totals	1085	740	38	206	101	2	381	168	24	298

FIFTH CIRCUIT										
Chambers County	117	68	21	26	2		52	10		6
Lee County	237	172	21	39	5		146	16		6
Macon County	116	81	16	18	1		62	11		8
Randolph County	135	82	22	28	3		48	17		17
Tallapoosa County	139	65	21	48	5		55	4		6
Totals	744	468	101	159	16		363	58		43
SIXTH CIRCUIT										
Tuscaloosa County	582	345	68	157	12		176	118	4	47
Totals	582	345	68	157	12		176	118	4	47
SEVENTH CIRCUIT										
Calhoun County	288	202	21	57	8		119	30	7	46
Cleburne County	154	104	18	29	3		48	13		43
Talladega County	143	116	13	14		1	79	27		9
Totals	585	422	52	100	11	1	246	70	7	98

GENERAL SUMMARY OF CASES IN CIRCUITS—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
EIGHTH CIRCUIT										
Cullman County	205	62	27	93	23	.....	22	2	6	32
Lawrence County	201	109	26	61	6	.....	104	1	1	3
Limestone County	199	110	35	53	1	.....	72	24	.....	14
Morgan County	202	94	21	78	10	.....	82	3	4	4
Totals	807	375	109	285	40	.....	280	30	11	53
NINTH CIRCUIT										
Cherokee County	119	42	12	62	3	.....	25	1	.....	16
DeKalb County	84	34	9	40	1	.....	30	2	.....	2
Jackson County	198	96	15	57	9	.....	57	15	1	13
Marshall County	169	47	15	101	6	.....	29	13	1	4
Totals	570	209	51	260	19	.....	141	31	2	35

TENTH CIRCUIT										
Jefferson County	3339	1541	323	1424	47	2	696	578	32	233
Totals	3339	1541	323	1424	47	2	696	578	32	233
ELEVENTH CIRCUIT										
Colbert County	405	132	53	184	36	.....	71	47	.....	14
Franklin County	34	21	2	7	4	.....	15	2	.....	4
Lauderdale County	200	100	32	44	24	.....	39	44	.....	17
Totals	639	253	87	235	64	.....	125	93	.....	35
TWELFTH CIRCUIT										
Coffee County	252	130	32	70	20	.....	72	40	.....	18
Pike County	198	106	31	55	6	.....	66	35	.....	5
Totals	450	236	63	125	26	.....	138	75	.....	23

GENERAL SUMMARY OF CASES IN CIRCUITS—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
THIRTEENTH CIRCUIT										
Mobile County	1191	884	80	126	102	3	349	431	59	19
Totals	1191	884	80	126	102	3	349	431	59	19
FOURTEENTH CIRCUIT										
Fayette County	102	61	15	26	.....	.....	15	24	3	25
Lamar County	159	90	13	41	15	.....	40	7	2	47
Marion County	168	97	22	47	2	.....	31	.....	.....	66
Walker County	473	267	74	116	15	1	125	44.	1	103
Winston County	240	140	24	63	12	.....	73	14	3	46
Totals	1142	655	148	293	44	1	284	89	9	287

FIFTEENTH CIRCUIT										
Montgomery County	900	678	51	171			579	63	2	34
Totals	900	678	51	171			579	63	2	34
SIXTEENTH CIRCUIT										
Blount County (Incomplete)	134	46	22	61	5		27	8		11
Etowah County	327	133	33	151	8		93	22		14
St. Clair County (Incomplete)	239	109	29	98	6	1	52	16	1	42
Totals	700	288	84	310	19	1	172	46	1	67
SEVENTEENTH CIRCUIT										
Greene County	198	143	23	39	5		32	40		41
Marengo County	212	125	28	56	3		74	14		37
Pickens County	116	93	13	12			47	16		22
Sumter County	179	109	8	41	10	3	60	22		20
Totals	705	470	72	148	18	3	213	92		120

GENERAL SUMMARY OF CASES IN CIRCUITS—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
EIGHTEENTH CIRCUIT										
Clay County	133	75	23	35	.....	.....	42	10	.....	23
Coosa County	115	77	15	19	4	.....	49	2	.....	26
Shelby County	228	129	39	48	12	1	84	24	.....	20
Totals	476	281	77	102	16	1	175	36	.....	69
NINETEENTH CIRCUIT										
Autauga County	130	95	13	21	.....	.....	76	12	.....	7
Chilton County	78	54	4	19	1	.....	41	12	.....	1
Elmore County	161	106	16	33	6	.....	86	13	1	6
Totals	369	255	33	73	7	.....	203	37	1	14

TWENTIETH CIRCUIT										
Geneva County	159	72	19	68			30	12		30
Henry County	110	50	16	44			38	2		10
Houston County	238	130	43	76			93	13		24
Totals	507	252	78	188			161	27		64
TWENTY-FIRST CIRCUIT										
Baldwin County (Incomplete)	155	70	17	56	12		31	9	3	29
Conecuh County (Incomplete)	140	83	7	46	4	1	38	25		21
Escambia County	158	66	24	48	19		26	4	3	27
Monroe County	125	79	18	25	3		44	24		9
Totals	578	298	66	175	38	1	139	62	6	86
TWENTY-SECOND CIRCUIT										
Covington County	279	213	19	39	5		70	88		54
Totals	279	213	19	39	5		70	88		54

GENERAL SUMMARY OF CASES IN CIRCUITS—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
TWENTY-THIRD CIRCUIT										
Madison County	1151	451	151	386	163	.....	72	189	1	168
Totals	1151	451	151	386	163	.....	72	189	1	168
CIRCUIT COURT OF AUTAUGA COUNTY										
Abusive language	1	1	.....	.....	.....	.....	.....	.....	.....	1
Assault and battery	2	.....	.....	.....	.....	.....	.....	2	.....	1
Assault to murder	11	9	1	1	.....	.....	4	3	.....	1
Burglary and grand larceny	26	24	1	1	.....	.....	24	.....	.....	.....
Carrying concealed weapon	2	1	1	.....	.....	.....	.....	4	.....	.....
Distilling	28	20	5	3	.....	.....	20	.....	.....	.....
False pretense	1	1	.....	.....	.....	.....	.....	.....	.....	1
Forgery	3	2	.....	1	.....	.....	1	.....	.....	.....

Grand larceny	22	15	2	5			15			
Malicious injury to property	5	4	1				1			
Manslaughter	2	2					2			
Murder	5	5					5			
Perjury	2			2						
Petit larceny	4	2	1	1				1		1
Robbery	1	1					1			
Receiving stolen property	4	3		2			1	1		2
Selling property covered by lien	5	1		4			1			
Transporting over 5 gallons whiskey	1	1					1			
Trespass after warning	1			1						
Violating prohibition law	4	3	1					1		
Totals	130	95	13	21			76	12		7

Percentage of convictions, 73.07. Predominant crime, burglary, and grand larceny.

CIRCUIT COURT OF BALDWIN COUNTY

Abusive language	4	4								4
Adultery	2		2							
Assault and battery	9	8	1					2	1	7
Assault to murder	6	4		2			4			
Attempt to distill	4	4								4
Burglary	14	10	1	3			10			

CIRCUIT COURT OF BALDWIN COUNTL—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Carnal knowledge	2		1	1						
Carrying concealed weapon	2			2						
Embezzlement	1	1					1			
Forgery	1	1							1	
Grand larceny	13	4	1	2	6		4			
Injury to animals	3	2	1							2
Manslaughter	3	3					3			
Murder	7	4	2	1			4			
Petit larceny	9	7	1	1				4	1	2
Possessing still	4	2		2			2			
Public drunkenness	2	2						1		1
Receiving stolen property	7	2		1	4		2			
Removing property under lien	1			1						
Reckless driving	1		1							
Transporting liquor	5	1		4			1			
Violating prohibition law	42	11	3	26	2			2		9
Violating game law	2		2							
Violating timber law	5		1	4						
Violating road law	6			6						

Totals, (Incomplete.)	155	70	17	56	12		31	9	3	29

Percentage of convictions, 45.16. Predominant crime, violating prohibition law.

CIRCUIT COURT OF BARBOUR COUNTY

Abusive language	5	5								5
Arson	6	1	2	3			1			
Assault and battery	21	16	5					4		12
Assault to murder	3	1	2				1			
Bigamy	2	2					2			
Bringing stolen property into state	1			1						
Burglary	5	4	1				4			
Carnal knowledge	2	1		1			1			
Carrying concealed weapon	3	1	1	1				1		
Concealing stolen property	1	1								1
Disposing mortgaged property	1	1								1
Distilling	41	32	7	2			32			
Disturbing religious worship	2			2						
Driving while intoxicated	2		2							
Embezzlement	1			1						
Failure to work road	1			1						
False pretense	3	1		2				1		
Forgery	2	2					2			
Grand larceny	11	6	4	1			6			
Homicide	14	10	4	1			10			

CIRCUIT COURT OF BARBOUR COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Malicious killing animal	2			2						
Petit larceny	12	9		3				6		3
Presenting firearms	1	1								1
Resisting public officer	2	1		1				1		
Reckless driving	6	5		1						5
Robbery	5	3		2			3			
Trespass	2		1	1						
Vagrancy	11	7		4				1		6
Violating check law	2			2						
Violating game law	2	1	1							1
Violating prohibition law	20	11	1	8				5		6
Totals	192	122	31	39			62	19		41

Percentage of convictions, 64.06. Predominant crime, distilling.

CIRCUIT COURT OF BIBB COUNTY

Abusive language	8	7		1			2		7
Adultery	4	2			2		2		2
Assault and battery	1	1							1
Assault and battery with weapon	12	12					3		10
Assault to murder	5	4		1		4			
Bastardy	1			1					
Burglary	6	5	1			6			
Burglary of railroad car	2	2				2			
Carnal knowledge	2		1	1					
Carrying concealed weapon	9	8			1		3		8
Concealing stolen property	2	1		1				1	
Disposing property under lien	4	1		2	1	1			
Distilling	31	25	2	3	1	25			
Disturbing public worship	1				1				
Driving while intoxicated	2	1			1		1		1
Embezzlement	3	1			2		1		
Escape from custody	1	1							1
False pretense	2	1		1					1
Forgery	2	2				1	1		
Grand larceny	30	22		5	3	22			
Manslaughter	3	3					2		2
Petit larceny	5	4		1			4		4
Possessing still	1	1				1			
Presenting firearms	2			2					
Public drunkenness	8	7			1				4
Receiving stolen property	2	1		1			1		1
Reckless driving	4	4		1				1	3

CIRCUIT COURT OF BIBB COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Resisting officer	1	1						1		1
Shooting into dwelling	2	2						2		1
Throwing rock into dwelling	1			1						
Vagrancy	1	1		1				1		1
Violating prohibition law	17	9		8				5		9
Totals	174	129	4	29	12		62	32	2	57

Percentage of convictions, 74.13. Predominant crime, distilling.

CIRCUIT COURT OF BLOUNT COUNTY

Abusive language	7	5		2				2		3
Adultery	3	2		1				1		1
Assault and battery	4	1		3						1
Assault to murder	6	2		3	1		1			1
Assault to ravish	2		1	1						

Arson	2		1	1						
Bastardy	3		1		2					
Burglary	9	6	1	2			6			
Burglary and grand larceny	2	1		2			1			
Carnal knowledge	2			2						
Desertion and non-support	3	1		2				1		
Disturbing religious worship	3	1	2							1
Distilling	7	3	2	2			3			
Driving while intoxicated	1	1						1		
False pretense	1		1							
Forgery	9	2		7			2			
Grand larceny	13	10	1	2			10			
Influencing jurors	3			3						
Manslaughter	2	1		1			1			
Murder	2	1	1				1			
Petit larceny	9	1	4	3	1					1
Presenting fire arms	1			1						
Practicing medicine without license	4	2		2						2
Peace proceedings	2			2						
Rape	1		1							
Reckless driving	1				1					
Receiving or concealing stolen property	1			1						
Robbery	1	1					1			
Seduction	1	1					1			
Selling mortgaged property	6		3	3						
Vagrancy	3	1	2					1		
Violating game law	9			8						
Violating prohibition law	11	3	1	7				2		1
Totals (Incomplete)	134	46	22	61	5		27	8		11

CIRCUIT COURT OF BLOUNT COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Percentage of convictions 34.32. Predominant crime, grand larceny.										

CIRCUIT COURT OF BULLOCK COUNTY

Assault and battery	2	2						1		1
Assault to murder	4	4					4			
Assault to rob	1	1					1			
Burglary	12	11	1				11			
Disposing of mortgaged property	4	2	1	1			2			
Disposing property under lien	1	1								1
Distilling	8	6		2			6			
Disturbing religious worship	1	1								1
Embezzlement	2		1	1						
Failure to work road	2			2						
False pretense	9	3	2	3	1		3			
Forgery	2	2					2			
Grand larceny	15	8	3	2	2		8			
Homicide	6	4	1	1			4			

Negligently burning forest	2			2						
Petit larceny	6	6						6		
Receiving stolen property	3	1		2						1
Seduction	1		1							
Trespass	1		1							
Vagrancy	1			1						
Violating game law	4	2		2						2
Violating prohibition law	6	2	2	2				1		1
Violating highway law	1	1						1		
Totals	94	57	13	21	3		41	9		7

Percentage of convictions, 60.63. Predominant crime, grand larceny.

CIRCUIT COURT OF BUTLER COUNTY

Abusive language	7	6		1				2		4
Assault and battery	13	9	1	3				8		2
Assault and battery with weapon	6	6						4		1
Assault to murder	9	3	2	4			3			
Bail forfeiture	1	1								1
Bigamy	1			1						
Burglary	16	12		4			12			
Carnal knowledge	1			1						
Carrying concealed weapon	2			2						
Cruelty to animals	4	4						4		

CIRCUIT COURT OF BUTLER COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Distilling	7	5	2				5			
Disturbing public worship	1	1						1		
Disturbing religious worship	1			1						
Driving while intoxicated	1			1						
Embezzlement	2			2						
Grand larceny	13	5	1	7			5			
Manslaughter	7	4	2	1			4			
Murder	10	10				1	9			
Petit larceny	7	4	1	2				4		
Public drunkenness	1			1						
Rape	1			1						
Robbery	3	3					3			
Transporting liquor	2	1					1			
Selling property under lien	1			1						
Using property without consent of owner	1	1						1		
Violating banking law	1			1						
Violating prohibition law	44	34		11				17		15
Violating school law	1			1						
Totals	164	109	9	46		1	42	41		23

Percentage of convictions, 66.46. Predominant crime, violating prohibition law.

CIRCUIT COURT OF CALHOUN COUNTY

Abusive language	4	3		1				1		2
Arson	2	1		1			1			
Assault and battery	5	2	2	1			1			1
Assault with weapon	16	12		4				5	1	6
Assault with intent to murder	10	5	2	1	2		5			
Assault with intent to rob	2	2					2			
Attempt to distill	4	4								4
Bastardy	5	4		1				4		
Burglary	49	41	2	4	2		41			
Carnal knowledge	5	3	1	1			3			
Carrying concealed weapon	3	2		1				1		1
Desertion and non-support	1	1								1
Distilling	18	14	3	1			14			
Driving car while intoxicated	1	1						1		
Disposing of mortgaged property	2			2						
Embezzlement	1			1						
False pretense	3	3					1	2		
False report to tax commission	2	2								2
Forgery	5	1	1	2	1		1			
Grand larceny	51	39	4	7	1		39			
Homicide	7	4	2	1			4			
Malicious injury to property	2	2								2
Operating slot machine	6	2	1	3						2

CIRCUIT COURT OF CALHOUN COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Petit larceny	19	16		3				5	5	6
Presenting firearms	2	1	1					1		
Public drunkenness	5	4		1						4
Receiving stolen property	2	1	1						1	
Reckless driving	1	1								1
Robbery	2			2						
Seduction	1	1					1			
Shooting along public road	1	1								1
Throwing into R. R. train	2	2						2		
Transporting liquor	10	4	1	5			4			
Violating banking laws	1	1					1			
Violating prohibition law	38	22		14	2		1	8		13
Totals	288	202	21	57	8		119	30	7	46

Percentage of convictions, 70.13. Predominant crime, violating prohibition law.

CIRCUIT COURT OF CHAMBERS COUNTY

Arson	1	1					1			
Assault and battery	1			1						
Assault with intent to murder	6	4	2				4			
Assault with weapon	7	5		2				3		2
Bastardy	2	1	1					1		
Bigamy	1			1						
Burglary	16	15	1				15			
Carrying concealed weapon	3	1	2							1
Concealing stolen property	1	1					1			
Desertion and non-support	1	1					1			
Disposing of mortgaged property	1			1						
Distilling	20	16	2	2			16			
Driving while intoxicated	1				1					
False pretense	2	1		1			1			
Forgery	1		1							
Grand larceny	10	6	1	3			5			1
Homicide	9	6	3				6			
Incest	2	1	1				1			
Petit larceny	6	2		4				1		1
Rape	1			1						
Receiving stolen property	1	1					1			
Reckless driving	2		2							
Violating game law	2			2						
Violating prohibition law	20	6	5	8	1			5		1
Totals	117	68	21	26	2		52	10		6

CIRCUIT COURT OF CHAMBERS COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Percentage of convictions, 58.11. Predominant crime, violating prohibition law.										

CIRCUIT COURT OF CHEROKEE COUNTY

Abusive language	5	1	1	3						1
Assault and battery	6	3		3						3
Assault with weapon	2		1	1						
Assault with intent to murder	4	1		3			1			
Assault with intent to rob	1	1					1			
Bastardy	1		1							
Bribing witness	2			2						
Burglary	10	2	2	6			2			
Carnal knowledge	1	1					1			
Carrying concealed weapon	2	1		1						1
Distilling	14	11		3			11			
Disposing of mortgaged property	2			2						
Disturbing religious worship	5	3	2							3
Embezzlement	1			1						

Forgery	1		1							
Grand larceny	6	3		3			3			
Homicide	1	1					1			
Petit larceny	8	1	2	5				1		
Presenting firearms	1			1						
Public drunkenness	8	4		4						4
Rape	1			1						
Seduction	2	1		1			1			
Transporting liquor	8	4	1	2	1		4			
Violating game and fish laws	4			4						
Violating prohibition law	23	4	1	16	2					4
Totals	119	42	12	62	3		25	1		16

Percentage of convictions, 35.29. Predominant crime, violating prohibition law.

CIRCUIT COURT OF CHILTON COUNTY

Abusive language	1			1						
Assault and battery	5	5						4		1
Assault to murder	1			1						
Burglary	1	1					1			
Burglary and grand larceny	9	5	2	1	1		5			
Burglary, grand larceny and receiving	1	1					1			
Distilling	35	30	1	4			30			
Embezzlement	2			2						
Forgery	1			1						

CIRCUIT COURT OF CHILTON COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Grand larceny and embezzlement	1	1					1			
Grand larceny and receiving	4	1	1	2			1			
Murder	4	3		1			2	1		
Petit larceny	2	1		1				1		
Petit larceny and receiving	6	3		3				3		
Selling mortgaged property	1			1						
Violating check law	1	1						1		
Violating prohibition law	2	1		1				1		
Violating revenue law	1	1						1		
Totals	78	54	4	19	1		41	12		1

Percentage of convictions, 69.23. Predominant crime, distilling.

CIRCUIT COURT OF CHOCTAW COUNTY

Abusive language	1	1								1

Adultery	4	1					3		1
Arson	2		1	1					
Assault and battery	5	3			2				3
Assault and battery with weapon	2	2						2	
Assault to murder	10	4	2	3	1		2		2
Assault to ravish	1				1				
Assault with weapon	8	8					1	2	5
Bastardy	1		1						
Burglary	14	8	2	2	2		8		
Carrying concealed weapon	3	1		1	1				1
Disposing of mortgaged property	1			1					
Distilling	7	4	1	2			4		
Election frauds	1		1						
Embezzlement	1	1							1
False pretense	1		1						
Forgery	4		1		3				
Grand larceny	11	6	3	1	1		6		
Homicide	12	7	3	1	1		7		
Kidnapping	1			1					
Killing dog	1				1				
Malicious mischief	1	1							1
Petit larceny	5	2		2	1		1	1	
Public drunkenness	3	3							3
Perjury	4			3	1				
Rape	2				2				
Reckless driving	1	1							1
Shooting along road	1			1					
Violating prohibition law	15	3	1	3	8		1		2
Violating stock law	1			1					

CIRCUIT COUT OF CHOCTAW COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Totals	124	56	17	23	25		33	5		21

Percentage of convictions, 45.16. Predominant crime, violating prohibition law.

CIRCUIT COURT OF CLARKE COUNTY

Adultery	3	1	1	1				1		
Aiding prisoner to escape	1			1						
Arson	2		1	1						
Assault and battery	14	11	2	1				2		9
Assault with intent to murder	2	2					2			
Assault with weapon	13	13						2		11
Attempt to distill	4	4								4
Attempt to game on Sunday	2	1		1						1
Bastardy	1		1							
Burglary	5	4		1			4			
Carrying concealed weapon	10	6	2	1	1			4		2

Disturbing public worship	1		1							
Disposing mortgaged property	4	1		3						1
Distilling	16	5	4	7			5			
Escape	2	2								2
Failure to work road	3	1		2						1
False pretense	5	4								4
Forgery	2	2					1	1		
Grand larceny	14	9	2	2	1		9			
Homicide	7	5		2			5			
Operating slot machine	6	6								6
Operating locomotive without spark arrester	1	1								1
Malicious injury to animal	1	1								1
Petit larceny	12	8	2		2			3		5
Presenting firearms	2			2						
Reckless driving	3		1	2						
Trespass	2		2							
Unlawful setting fire to woods	1	1								1
Vagrancy	2			2						
Violating check law	3	1		2				1		
Violating game and fish law	5		2	3						
Violating prohibition law	31	13	1	12	5			5		8
Violating prohibition law—transporting	1	1					1			
Violating highway law	1		1							
Violating stock law	2			2						
Totals	184	103	23	48	9		27	19		59

Percentage of convictions, 55.95. Predominant crime, violating prohibition law.

CIRCUIT COURT OF CLAY COUNTY

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Abusive language	1		1							
Adultery	2	1		1				1		
Assault	1	1								1
Assault and battery	3	3						1		2
Assault to murder	4	2	1	1			2			
Assault to ravish	1		1							
Assault with weapon	4	4								4
Attempt to distill	6	6								6
Bastardy	2	1	1					1		
Bigamy	3	3					3			
Burglary	18	16		2			16			
Carnal knowledge	2			2						
Carrying concealed weapon	4	3		1						3
Concealing stolen property	1			1						
Defamation	1	1								1
Disposing mortgaged property	2			2						
Distilling	26	16	7	3			16			
Disturbing religious worship	1			1						
Driving while intoxicated	1			1						
False pretense	3	1	1	1				1		
Fornication	2	1	1				1			

Grand larceny	2	1		1			1			
Homicide	4	3		1			3			
Malicious injury to animal	1		1							
Petit larceny	3			3						
Possessing liquor	9	4	2	3				3		1
Public drunkenness	12	7	2	3				2		5
Rape	2		1	1						
Reckless driving	2	1		1				1		
Robbery	1		1							
Seduction	1			1						
Selling property under lien	2		1	1						
Sodomy	1		1							
Trespass	2			2						
Violating highway law	1			1						
Violating revenue law	2		1	1						
Totals	133	75	23	35			42	10		23

Percentage of convictions, 56.39. Predominant crime, distilling.

CIRCUIT COURT OF CLEBURNE COUNTY

Arson	3	2	1				2			
Assault and battery	3			3						
Assault with weapon	6	2	2	2				1		1
Assault with intent to murder	7	2	3	1	1		2			

CIRCUIT COURT OF CLEBURNE COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Attempt to distill	39	39						5		34
Bastardy	1			1						
Bringing stolen property into state	1			1						
Burglary	1	1					1			
Carnal knowledge	1	1					1			
Carrying concealed weapon	1	1						1		
Concealing stolen property	2	1		1						1
Distilling	54	36	9	7	2		36			
Dealing in county claims	1			1						
Driving while intoxicated	4			4						
Disposing of mortgaged property	1	1								1
Fighting in public place	1	1						1		
Forgery	2	1		1			1			
Grand larceny	1	1					1			
Homicide	4	4					2	2		
Malicious destruction of property	1			1						
Petit larceny	5	1	1	3						1
Public drunkenness	1	1								1
Trespass	3		1	2						
Transporting liquor	2	2					2			
Violating prohibition law	9	7	1	1				3		4

Totals	154	104	18	29	3	48	13		43

Percentage of convictions, 67.53. Predominant crime, distilling.

CIRCUIT COURT OF COFFEE COUNTY

Abusive language	5	2		1	2			1		1
Adultery	1			1						
Arson	1	1					1			
Assault	1	1						1		
Assault and battery	17	15	2					11		4
Assault to murder	10	2	2	4	2		2			
Attempt to bribe	1				1					
Bastardy	3	1	2					1		
Burglary	15	9	2	1	3		9			
Carnal knowledge	1	1					1			
Carrying concealed weapon	4	4						4		
Conducting nuisance	1			1						
Disposing mortgaged property	5			4	1					
Disturbing religious worship	1			1						
Embezzlement	3			2	1					
Exploding dynamite	2	1	1				1			
False pretense	11	1	4	5	1		1			
Forgery	9	7		1	1		7			
Gaming	4	3						1		2

CIRCUIT COURT OF COFFEE COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Grand larceny	11	7		4			7			
Homicide	5	3	2				3			
Mayhem	1			1						
Malicious injury to animal	1		1							
Poisoning stock	1		1							
Passing counterfeit coin	1			1						
Possession of still	8	6		1	1		6			
Public drunkenness	10	5		6				3		2
Perjury	15	14		1			14			
Receiving stolen property	2	1	1				1			
Reckless driving	3	3								3
Resisting officer	1	1						1		
Robbery	4	2		2			2			
Seduction	1	1					1			
Transporting whiskey	3	3					3			
Vagrancy	1		1							
Violating check law	17	3	3	10	1			2		1
Violating game law	1			1						
Violating prohibition law	61	30	10	17	4		13	15		2
Violating revenue law	10	3		5	2					3

Totals	252	130	32	70	20		72	40		18

Percentage of convictions, 51.58. Predominant crime, violating prohibition law.

CIRCUIT COURT OF COLBERT COUNTY

Affray	1	1						1		
Abusive language	5	2		1	2			2		
Adultery	4	2		2				2		
Aiding prisoner to escape	3				3					
Arson	1	1					1			
Assault and battery	14	2	2	6	4			1		1
Assault and battery with weapon	8	6	1		1			5		1
Assault with intent to murder	17	7	4	5	1		5	2		
Assault with intent to ravish	2	2					2			
Attempt to commit burglary	3	2			1			2		
Attempt to transport liquor	1	1								1
Bastardy	3	1	1	1				1		
Bigamy	1				1					
Burglary	22	18	2	1	1		18			
Carrying concealed weapon	5	1	2	1	1			1		
Concealing stolen property	4	4					4			
Conspiracy to commit grand larceny	1			1						
Corruptly receiving fees	3			3						
Distilling	40	9	11	16	4		9			

CIRCUIT COURT OF COLBERT COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Driving car while intoxicated	1	1						1		
Disposing property under lien	1			1						
Embezzlement	85			85						
Escaping jail	1				1					
False pretense	8			5	3					
Forgery	6	3		2	1		3			
Grand larceny	32	21	8	2	1		21			
Highway robbery	1	1					1			
Homicide	10	5	1	2	2		5			
Keeping gaming table	2		1	1						
Kidnapping	1		1							
Malicious injury to animal	2		1		1					
Miscegenation	1			1						
Perjury	3			3						
Petit larceny	13	9		3	1			8		1
Presenting firearms	2	1	1							1
Public drunkness	6	3		3				3		
Receiving bribe	7			7						
Reckless driving	4		2	1	1					
Seduction	2			1	1					
Sodomy	1				1					

Transporting liquor	3	2			1		2		
Vagrancy	5	1	2	2					1
Violating check law	1			1					
Violating game law	3		3						
Violating highway law	2	1			1			1	
Violating prohibition law	62	24	10	26	2			17	7
Violating revenue law	2	1		1					1
Totals	405	132	53	184	36		71	47	14

Percentage of convictions, 32.59. Predominant crime, violating prohibition law.

CIRCUIT COURT OF CONECUH COUNTY

Abusive language	6	1	1	4				1	
Assault and battery	4	3		1				3	
Assault and battery with weapon	5	4	1					2	2
Assault to murder	12	8		3	1		8		
Assault to ravish	1	1					1		
Attempt to distill	5	5						1	4
Arson	1			1					
Bigamy	2	2					2		
Burglary	9	8		1			8		
Carrying concealed weapon	4	3		1				2	1
Distilling	16	15		1			15		
Destruction of lien	1			1					

CIRCUIT COURT OF CONECUH COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Disposing property under lien	2			1	1					
Driving while intoxicated	1	1								1
False pretense	2			2						
Grand larceny	4	1	1	2			1			
Injury to animals	2			2						
Malicious injury to property	1				1					
Manslaughter	2	2					2			
Murder	5	2	1	2		1	1			
Operating slot machine	3	3								3
Petit larceny	13	11		2				11		
Presenting fire arms	1			1						
Perjury	1			1						
Public drunkenness	1	1								1
Robbery	1			1						
Seduction	1			1						
Seining	5		1	4						
Selling mortgaged property	3			3						
Temporary use of property	2	2						1		1
Unlawfully breaking fence	1	1								1
Violating auto license law	2			2						1
Violating check law	3	1		2						1

Violating timber law	1	1						1		
Violating prohibition law	17	7	2	7	1			3		5
Totals (Incomplete)	140	83	7	46	4	1	38	25		21

Percentage of convictions, 59.28. Predominant crime, violating prohibition law.

CIRCUIT COURT OR COOSA COUNTY

Abusive language	1			1						
Assault and battery	5	5					2			3
Assault to murder	2	1	1				1			
Assault to ravish	3		1	2						
Attempt to distill	14	14								14
Bastardy	5		1	1	3					
Bigamy	1	1					1			
Burglary	12	11	1				11			
Carrying concealed weapon	1			1						
Disposing mortgaged property	2	2								2
Distilling	38	31	4	2	1		31			
Escape from jail	1	1						1		
False pretense	3	2		1			1			1
Grand larceny	1	1					1			
Homicide	1		1							
Petit larceny	5	2	1	2				1		1
Possessing liquor	6	2	3	1						2

CIRCUIT COURT OF COOSA COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Public drunkenness	3	1		2						1
Transporting five gallons whiskey	1	1					1			
Trespass	3	1	1	1						1
Violating check law	1			1						
Violating revenue law	5		1	4						
Violating Section 3298 Code	1	1								1
Totals	115	77	15	19	4		49	2		26

Percentage of convictions, 66.95. Predominant crime, distilling.

CIRCUIT COURT OF COVINGTON COUNTY

Abusive language	11	10		1				5		5
Arson	5	3	2	1			3			
Assault and battery	14	11		2	1			5		5
Assault to murder	9	5	3	1			5			

Attempt to forge	1	1					1		
Appeal from probate court	1			1					
Bastardy	3	1			2	1			
Burglary	12	10	1	1		9	1		
Burglary and grand larceny	3	3				3			
Carrying concealed weapon	6	3		3			1		2
Carnal knowledge	1			1					
Disturbing religious worship	2	1	1				1		
Disposing property under lien	1	1				1			
Driving without lights	1	1							1
Escape	2	2					2		
False pretense	3	3					2		1
Forgery	10	10				7	3		
Grand larceny	26	19	5	2		19			
Manslaughter	6	5	1			5			
Miscegenation	2	2				2			
Murder	4	3		1		3			
Mayhem	1	1				1			
Petit larceny	24	21	1	1	1		17		4
Public drunkenness	3	3					1		2
Presenting firearms	3	1		2					1
Polluting water	1	1							1
Reckless driving	5	2	2	1			1		1
Resisting officer	1			1					
Selling mortgaged property	7	1	1	5		1			
Violating check law	22	19		3			14		5
Violating revenue law	2	1		1					1
Violating prohibition law	84	65	2	11	1	10	31		25
Vagrancy	3	3					3		

CIRCUIT COURT OF COVINGTON COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Totals	279	213	19	39	5	.....	70	88	.....	54

Percentage of convictions 76.34. Predominant crime, violating prohibition law.

CIRCUIT COURT OF CRENSHAW COUNTY

Abusive language	4	2	1	1	.....	.....	.....	2	.....	.....
Assault and battery	5	4	1	.....	.....	.....	.....	2	.....	2
Assault and battery with weapon	4	4	.....	.....	.....	.....	.....	4	.....	.....
Assault to murder	7	3	.....	2	2	.....	2	.....	.....	.....
Burglary	1	.....	.....	1	.....	.....	.....	.....	.....	.....
Carnal knowledge	1	1	.....	1	.....	.....	1	.....	.....	.....
Carrying concealed weapon	3	2	1	.....	.....	.....	.....	2	.....	.....
Disposing mortgaged property	3	1	.....	2	.....	.....	.....	.....	.....	1
Distilling	17	12	2	3	.....	.....	12	.....	.....	.....
False pretense	5	2	2	1	.....	.....	.....	1	.....	2
Forgery	2	2	.....	.....	.....	.....	2	.....	.....	.....

Gaming	3	3						2		1
Grand larceny	4	2	1	1			2			
Manslaughter	4	4					2	1		1
Murder	5	2		3			2			
Petit larceny	9	9						8		1
Possessing still	2	2					2			
Rape	1		1							
Reckless driving	1	1						1		
Robbery	2	1					1			
Trespass	6			6						
Vagrancy	1			1						
Violating auto law	14	5	2	7				4		
Violating banking law	1			1						
Violating check law	1		1							
Violating game law	9			9						
Violating revenue law	5			5						
Violating prohibition law	32	21	4	6	1			19		2
Totals	152	83	16	50	3		26	46		10

Percentage of convictions, 54.60. Predominant crime, violating prohibition law.

CIRCUIT COURT OF CULLMAN COUNTY

Abusive language	18	4	1	11	2					4
Adultery	1	1						1		

CIRCUIT COURT OF CULLMAN COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Allowing minor to play pool	2	1		1						1
Arson	3	2		1			2			
Assault and battery	10	4	1	2	3					4
Assoult and battery with weapon	2	2							1	1
Assault with intent to murder	7			7						
Assault with intent to ravish	2			1	1					
Assault with weapon	1	1								1
Attempt to distill	3	3								3
Bastardy	1		1							
Bigamy	1				1					
Burglary and grand larceny	13	5	1	4	3		5			
Carnal knowledge	4	2		1	1		2			
Carrying concealed weapon	3	2		1						2
Concealing stolen property	1				1					
Defacing church property	1		1							
Disorderly conduct	1				1					
Disposing mortgaged property	12		3	8	1					
Distilling	15	6	2	6	1		6			
Disturbing public worship	7	2		4	1					2
Driving while intoxicated	2		1	1						
Embezzlement	2		1	1						

False pretense	14	1	3	9	1		1			
Forgery	1				1					
Grand larceny	7	2	2	2	1		2			
Homicide	5	1	3	1			1			
Malicious injury to animal	1			1						
Operating slot machine	13	7		6						7
Perjury	1			1						
Petit larceny	11	5	1	5				1	4	
Possessing still	2	2					2			
Presenting firearms	1			1						
Public drunkness	8	4		3	1					4
Reckless driving	3		1	2						
Robbery	2			1	1					
Seduction	1			1						
Seining	2	1	1							1
Transporting liquor	2	1	1				1			
Vagrancy	3			3						
Violating check law	2			2						
Violating game law	2	1	1						1	
Violating prohibition law	12	2	2	6	2					2
Totals	205	62	27	93	23		22	2	6	32

Percentage of convictions, 30.24. Predominating crime, violating prohibition law.

CIRCUIT COURT OF DALE COUNTY

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Abusive language	4	4								4
Arson	1	1					1			
Assault and battery	13	9	2	2						9
Assault to murder	4	4					4			
Assault to ravish	1			1						
Bastardy	3	3								3
Burglary	9	8	1				8			
Carrying concealed weapon	3	2		1						2
Concealing stolen property	2	1		1						1
Disposing mortgaged property	2		1	1						
Distilling	11	10		1			10			
Embezzlement	1		1							
Failure to work road	7	5	2							5
False pretense	2	2								2
Forgery	4	1		3			1			
Grand larceny	3		2	1						
Homicide	6	6					5			1
Petit larceny	12	8	2	2				5		3
Public drunkness	2	1	1							1
Reckless driving	6	4	1	1				1		3
Robbery	2	1	1				1			

Seduction	1			1						
Transporting five gallons whiskey	3	2		1			2			
Vagrancy	2	1		1				1		
Violating check law	1	1								1
Violating contract law	1	1								1
Violating game law	2	1		1						1
Violating prohibition law	31	15	6	10				2		13
Violating highway law	1			1						
Violating revenue law	1	1								1
Violating Sunday law	1	1								1
Wanton injury to property	1	1								1
Totals	143	94	20	29			32	9		53

Percentage of convictions, 65.73. Predominant crime, violating prohibition law.

CIRCUIT COURT OF DALLAS COUNTY

Adultery	2				2					
Arson	1	1	1				1			
Assault and battery	5	4		1						4
Assault and battery with weapon	15	13		2				7		13
Assault to murder	14	11	1	2			11			
Bastardy	1				1					
Bigamy	1			1						
Burglary	69	51	1	6	11		51			

CIRCUIT COURT OF DALLAS COUNTY—(Continud)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Carnal knowledge	2	1		1			1			
Carrying concealed weapon	20	14		5				3		14
Changing name to conceal identity	2	2								2
Disposing property under lien	5	2			4		2			
Disposing mortgage property	1									
Distilling	41	32	4	5			32			
Disturbing public worship	1		1							
Driving while intoxicated	1	1								1
Driving vehicle without lights	2	1		1						1
Embezzlement	2		1	1						
False pretense	4		1	3						
Forgery	11	6	1	4			1	4		
Grand larceny	43	33	2	3	5		33			
Manslaughter	7	7					5	2		
Murder	2	1	1			1		1		
Petit larceny	24	24						14	10	15
Presenting firearms	2	2								2
Rape	1				1					
Receiving stolen property	1	1						1		
Reckless driving	4	1	1	2			1			1
Robbery	6	6					5			

Shooting into building	1			1						
Shooting into dwelling	1	1								1
Trespassing after warning	1			1						
Transporting whiskey, five gallons	1	1					1			
Temporary use of vehicle without consent of owner	2	2						2		2
Unlawfully riding train	1	1								2
Violating game law	3			3						
Violating prohibition law	33	20		9	4			11	1	20
Violating traffic law	2	1		1						1
Totals	335	240	15	52	28	1	144	45	11	79

Percentage of convictions, 71.64. Predominant crime, violating prohibition law.

CIRCUIT COURT OF DEKALB COUNTY

Arson	2		1	1						
Assault	1	1								1
Assault with intent to murder	3	2		1				1		1
Bastardy	3	2		1			1	1		
Bigamy	1	1					1			
Burglary	22	12	3	7			12			
Carnal knowledge	5			5						
Distilling	21	7	1	13			7			
Disposing property under lien	1			1						
Embezzlement	1				1					

CIRCUIT COURT OF DEKALB COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
False pretense	3			3						
Forgery	5	2		3			2			
Grand larceny	5	2	1	2			2			
Homicide	4	1	3				1			
Robbery	4	4					4			
Seduction	2			2						
Violating banking law	1			1						
Totals	84	34	9	40	1		30	2		2

Percentage of convictions, 40.47. Predominant crime, burglary.

CIRCUIT COURT OF ELMORE COUNTY

Aiding an escape	1	1					1			
Arson	3	3					3			
Assault and battery	7	7						5	1	1

Assault to murder	4	2		1	1		2			
Assault to ravish	1			1						
Bastardy	1	1								1
Bigamy	1			1						
Burglary	8	3		3	2		3			
Burglary and grand larceny	30	20	3	7			20			
Carnal knowledge	4	2	2				2			
Concealing stolen property	2	2					1	1		
Discharging firearms across public road	1	1					1			
Disposing of property under lien	7	2	2	3			2			
Distilling	23	18	3		2		18			
Embezzlement	4	1	1	2				1		
Forgery	1	1						1		
Grand larceny	27	21	2	4			21			
Incest	1	1					1			
Manslaughter	1	1					1			
Murder	10	9		1			9			
Petit larceny	4	4						4		
Reckless driving	3	1	1	1				1		
Robbery	3	1	1	1			1			
Violating gaming law	6	4		2						4
Violating prohibition law	8		1	6	1					
Totals	161	106	16	33	6		86	13	1	6

Percentage of convictions, 65.83. Predominant crime, burglary, and grand larceny.

CIRCUIT COURT OF ESCAMBIA COUNTY

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Abusive language	9	2	2	4	1					2
Abortion	2				2					
Assault and battery	16	7	3	6						4
Aiding felon to escape	1	1					1			
Assault and battery with weapon	5	3		2						3
Assault to murder	6			6						
Bigamy	1	1					1			
Burglary	17	12		2	3		12			
Carnal knowledge	1			1						
Carrying concealed weapon	1			1						
Defamation	2		1		1					
Driving while intoxicated	3	2		1						2
Distilling	1			1						
Embezzlement	1				1					
Failing to stop after accident	1	1								1
False pretense	2		1		1					
False personation	1	1						1		1
Forgery	8	4	2	1	1		2		2	
Grand larceny	11	4	1	4	2		5			
Malicious injury to property	1	1								1
Manslaughter	3	1		1	1		1			

Murder	3	2	1				2			
Non-support	1	1						1		
Petit larceny	10	6	2	1	1			1	1	2
Public drunkenness	2	1		1						
Presenting firearms	1	1								1
Reckless driving	3			2	1					
Robbery	1	1					1			
Seduction	1		1							
Selling mortgaged property	2			2						
Transporting liquor	4	1	2	1			1			
Trespass	1			1						
Violating auto law	1			1						
Violating check law	3	1	2							1
Violating game law	6	1	4	1						
Violating highway law	1			1						
Violating prohibition law	25	11	2	7	4			1		9
Totals	158	66	24	48	19		26	4	3	27

Percentage of convictions, 41.77. Predominant crime, violating prohibition law.

CIRCUIT COURT OF ETOWAH COUNTY

Arson	3		1	2						
Assault to murder	38	14	6	15	3		4	7		2
Assault and battery	17	8	1	8				5		3

CIRCUIT COURT OF ETOWAH COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Abusive language	2			2						
Assault with intent to ravish	5			5						
Bastardy	4	1		3						1
Bigamy	1	1					1			
Burglary of R. R. car	1	1					1			
Burglary and grand larceny	42	25	2	13	2		21	2		1
Burglary	6	4		2			4			
Breach of peace	2			2						
Carrying concealed weapon	2	1		1				1		
Carnal knowledge	8	2		5	1		2			
Defamation	1			1						
Destroying property	1			1						
Distilling and possession	33	21	8	4			21			
Driving while intoxicated	1			1						
Depositing or throwing stink bomb	3		1	2						
Disturbing religious worship	1	1								1
Embezzlement	6			6						
False pretense	9			9						
Forgery	11	5		6			5			
Grand larceny	17	7	1	9			3	1		1
Grand larceny and receiving stolen property	49	29	2	18			24	2		3

Grand larceny, embezzlement and receiving stolen property	3	1		2			1			
Keeping a gaming table	2	2								2
Keeping a female for prostitution	1			1						
Manslaughter	1	1						1		
Malicious injury to property	2			2						
Murder	12	5	4	3			5			
Non-support	1			1						
Practicing dentistry under another name	1				1					
Petit larceny	1			1						
Perjury	4	1		3						
Rape	1				1					
Robbery	3			3						
Reckless driving	4		1	3						
Selling mortgaged property	7		1	5						
Seduction	2			1			1			
Transporting prohibited liquors	2			2						
Using auto without consent of owner	2	1		1				1		
Unlawfully using an animal	1			1						
Violating prohibition law	12	2	4	6				2		
Vagrancy	1			1						
Violating highway law	1		1							
Totals	327	133	33	151	8		93	22		14

Percentage of convictions, 40.67. Predominant crime, grand larceny and receiving stolen property.

CIRCUIT COURT OF FAYETTE COUNTY

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Peniten-tiary	Hard Labor	Jail	
Abusive language	1	1								1
Assault and battery	25	17	3	5				8		11
Assault to murder	3	2		1			1			
Bastardy	1	1								1
Burglary	6	6					4	2		
Carrying concealed weapon	2		1	1						
Destroying personal property	1	1						1		
Disturbing religious worship	1			1						
Distilling	4	1		3			1			
False pretense	1			1						
Grand larceny	10	5	1	4			5			
Injury to animals	1		1							
Miscegenation	2	2					2			
Murder	1		1							
Petit larceny	11	6		5				3	3	4
Public drunkenness	5	3		2						3
Possession of still	1	1						1		
Reckless driving	4		1	3						
Seduction	2	2					2			
Violating road law	1	1						1		
Violating prohibition law	19	12	7					8		5

Totals	102	61	15	26			15	24	3	25

Percentage of convictions, 59.80. Predominant crime, assault and battery.

CIRCUIT COURT OF FRANKLIN COUNTY

Assault with intent to murder	2	2					1			1
Assault with intent to ravish	1	1						1		
Assault with weapon	1	1					1			
Burglary	6	4		1	1		3			1
Disposing of mortgaged property	3	1		2				1		
Distilling	6	4		1	1		3			1
Forgery	1	1					1			
Grand larceny	1		1							
Homicide	10	5	1	2	2		5			
Petit larceny	1	1								1
Seduction	1			1						
Transporting liquor	1	1					1			
Totals	34	21	2	7	4		15	2		4

Percentage of convictions, 61.76. Predominant crime, homocide.

CIRCUIT COURT OF GENEVA COUNTY

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Abusive language	7	1	1	5						1
Assault and battery	10	4	1	5						4
Assault and battery with weapon	1	1								1
Assault to murder	8	3	2	3						3
Arson	2		1							
Affray	1			1						
Bigamy	1	1					1			
Burglary	8	4	1	3			2	1		
Carnal knowledge	2			2						
Carrying concealed weapon	3	1		2						1
Cruelty to animals	1		1							
Disturbing religious worship	1	1								1
Disturbing woman in public place	1	1								1
Disposing mortgaged property	1			1						
Driving while intoxicated	1			1						
Embezzlement	6	1		5						1
Escaping jail	1	1						1		
False pretense	6			6						
Forgery	3	2		1			2			
Grand larceny	10	7	2	2			7	1		
Manufacturing liquor and possessing still	12	10		2			10			

Manslaughter	2	2					1	1		
Murder	8	6	1	1			6			
Petit larceny	15	5	2	8				3		3
Public drunkenness	5	3		2						3
Reckless driving	2			2						
Resisting officer	1			1						
Selling property under lien	1			1						
Sodomy	2	1		1				1		
Transporting liquor	2	1	1				1			
Vagrancy	4			4						
Violating revenue law	2	1		1						1
Violating stock law	1			1						
Violating Sunday law	1			1						
Violating timber law	1		1							
Violating prohibition law	26	15	5	6				4		10
Totals	159	72	19	68			30	12		30

Percentage of convictions, 45.28. Predominant crime, violating prohibition law.

CIRCUIT COURT OF GREENE COUNTY

Abusive language	3	3						1		2
Assault and battery	8	6	2	1				3		5
Assault and battery with weapon	13	9		4				6		3
Assault to murder	9	2	4	5						

CIRCUIT COURT OF GREENE COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Peniten-tiary	Hard Labor	Jail	
Burglary	4	4					4			
Carrying concealed weapon	24	18	2	3				9		10
Disposing mortgaged property	10	2	7	1						
False pretense	1		1							
Grand larceny	21	20	1				7			
Manslaughter	7	5	1	1			2			
Malicious injuring animals	1	1						1		
Manufacturing and possessing still	33	22	1	8	1		12	3		4
Murder	7	5		2			4			
Petit larceny	15	14	2	3			1	4		6
Public drunkenness	1			1						
Reckless driving	4	2	1	1	1		1			
Practicing medicine without license	1		1							
Temporary use of automobile	1	1						1		
Transporting liquor	1	1					1			
Violating auto law	1	1								1
Violating license law	1				1					
Violating prohibition law	32	27		9	2			12		10
Totals	198	143	23	39	5		32	40		41

Percentage of convictions, 72.22. Predominant crime, violating prohibition law.

CIRCUIT COURT OF HALE COUNTY

Abusive language	1	1								1
Assault and battery	1	1								1
Assault and battery with weapon	21	20		1				8	1	17
Assault to murder	12	10		2			10			
Attempt to aid escape	1	1						1		1
Arson	2	1		1			1			
Burglary	12	12					12			
Carnal knowledge	1	1					1			
Carrying concealed weapon	14	10	2	2				5		10
Criminal provocation	2	2								2
Distilling	9	5	1	2	1		5			
Defacing dwelling	1	1								1
Disposing mortgaged property	1			1						
Disposing property under lien	5	4		1			4			
Destroying fence	1			1						
Disturbing public worship	1	1						1		1
Disturbing school	1	1						1		1
Disturbing women at public assemblage	4	4								4
Escape from jail	11	11						3		11
Forgery	5	5					4	1		
False pretense	8	7		1			5	1		1
Grand larceny	16	15		1			15			
Manslaughter	7	6		1			6			

CIRCUIT COURT OF HALE COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Murder	4	3	1			1	2			
Operating slot machine	3	1		2						1
Petit larceny	9	7		2			1	5	2	1
Possessing still	1	1					1			
Public drunkenness	1	1								1
Receiving stolen property	1	1						1		1
Reckless driving	4	3		1					1	2
Removing mortgaged property	1	1								1
Resisting officer	2	2						2		2
Trespass after warning	5	3		2				2		3
Vagrancy	3	3						3		3
Violating auto law	1	1								1
Violating check law	1			1						
Violating game law	44	2		42						2
Violating road law	1	1								1
Violating prohibition law	21	11	1	7	2			4	1	11
Totals	239	160	5	71	3	1	66	38	5	84

Percentage of convictions, 66.94. Predominant crime, violating game law.

CIRCUIT COURT OF HENRY COUNTY

Abusive language	3	1	1	1						1
Arson	1		1							
Assault and battery	1			1						
Assault and battery with weapon	4	3	1							3
Assault to murder	4	2	2				1			1
Burglary	3	3					3			
Carnal knowledge	2	2					2			
Carrying concealed weapon	1	1								1
Disturbing public worship	1	1						1		
Embezzlement	1			1						
Enticing away laborers	1			1						
False pretense	4			4						
Forgery	3	2		1			3			
Fraud	1		1							
Grand larceny	7	3	3	1			2			
Manslaughter	1		1							
Manufacturing liquor	16	15	1				15			
Murder	6	4	1				4			
Petit larceny	7	2	1	5						2
Possessing a still	8	8					8			
Public drunkenness	1	1								1
Resisting officer	1			1						
Receiving or concealing stolen property	10			10						
Selling mortgaged property	2		1	1						
Slaughtering diseased animal	3			3						
Shooting along highway	1	1								1
Using auto without consent of owner	1			1						

CIRCUIT COURT OF HENRY COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Vagrancy	2			2						
Violating auto license law	1		1							
Violating rental contract	2			2						
Violating road law	2			2						
Violating Sunday gaming law	1		1							
Violating prohibition law	8	1		7				1		
Totals	110	50	16	44			38	2		10

Percentage of convictions, 45.45. Predominant crime, violating prohibition law.

CIRCUIT COURT OF HOUSTON COUNTY

Assault and battery	9	3	4	2				1		2
Assault and battery with weapon	8	3	1	4				1		2
Assault to murder	18	9	4	5			4	3		2
Assault to rape	2	1	1				1			

Abusive language	4		1	3					
Aid escape	1	1					1		
Adultery	1			1					
Arson	2			2					
Burglary	24	23	2	3		23			
Carrying concealed weapon	3	1		2					1
Concealing or selling stolen property	4	2		2		2			
Carnal knowledge	2		1	1					
Driving while intoxicated	3	1	1	1					1
Embezzlement	3	1	1	1		1			
False pretense	10		4	6					
Forgery	6	5	1			5			
Failure to return hired auto	1	1							1
Grand larceny	31	25	1	5		24			1
Injury public building	1			1					
Injury public utilities	1		1						
Manslaughter	3	8				8			
Murder	8	3	1	4		3			
Malicious injury to property	1			1					
Mayhem	1			1					
Non-support	3	1	2				1		
Presenting firearms	2		1	1					
Public drunkenness	2	1		1					1
Petit larceny	12	4	2	6			1		3
Possessing still	7	5	2			5			
Robbery	3	4	1			1			3
Selling property covered by lien	6	1	3	2		1			
Selling mortgaged property	1		1						
Transporting liquor	19	15		4		15			
Trespass	2		2						

CIRCUIT COURT OF HOUSTON COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Vagrancy	11		1	10						
Violating game law	1			1						
Violating highway law	1	1								1
Violating prohibition law	20	11	4	5				5		6
Violating revenue law	1			1						
Totals	238	130	43	76			93	13		24

Percentage of convictions, 54.62. Predominant crime, grand larceny.

CIRCUIT COURT OF JACKSON COUNTY

Abusive language	7	2		3	2					2
Assault	2	1		1				1		
Assault and battery	4		2		2					
Assault to murder	4	1	1	1			1		1	
Assault to rob	2			2						

Assault with weapon	6	3		3			2	1
Bastardy	3	3						1
Burglary	24	13	1	10		13		
Carnal knowledge	2			2				
Carrying concealed weapon	2	2					1	1
Destroying property	2		2					
Disposing mortgage property	1				1			
Disposing property under lien	1			1				
Distilling	27	25		2		24		
Disturbing religious worship	1	1						1
Driving while intoxicated	2		1	1				
Embezzlement	1			1				
False pretense	5	1		2	2	1		
Forgery	3	2		1		2		
Larceny	7	6	1				2	
Malicious injury to property	1	1					1	
Manslaughter	1	1				1		
Murder	5	4	1			4		
Operating slot machine	2	1			1			1
Petit larceny	4	1		3			1	
Possessing still	11	7	1	3		6		
Presenting firearms	1	1						1
Public drunkenness	9	4		5				4
Rape	20							
Reckless driving	2			2				
Resisting officer	2		1	1				
Seduction	2			2				
Transporting whiskey	5	5				5		
Violating game law	3		1	2				1
Violating highway law	1		1					

CIRCUIT COURT OF JACKSON COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Violating prohibition law	23	11	2	9	1			7		
Totals	198	96	15	57	9		57	15	1	13

Percentage of convictions, 48.48. Predominant crime, distilling.

CIRCUIT COURT OF JEFFERSON COUNTY

Abusive language	40	15	6	19				7		8
Adultery and fornication	5	2		3				2		
Arson	11	2	3	6			2			
Assault and battery	117	88	13	75	1			63	2	23
Assault and battery with weapon	1	1						1		
Assault with intent to murder	55	18	11	26			18			
Assault with intent to ravish	9	4		5			4			
Assault with intent to rob	7	2	1	4			2			
Attempt to commit a felony	31	21	3	7				17	4	

Attempt to distill	30	28		2				13	1	14
Bastardy	44	6	5	32	1			6		
Bigamy	5	3		2			3			
Blackmail	1			1						
Breach of Peace	4			4						
Bribery	3			3						
Burglary	236	211	8	17			200	11		
Burglary and grand larceny	127	25	14	88			23	2		
Buying, receiving, concealing stolen property	54	31	1	22			15	15		1
Carnal knowledge	3	1	2				1			
Carrying concealed weapon	24	11	1	11	1			10		1
Changing name to conceal itentity	1		1							
Conspiracy	1			1						
Cruelty to animals	1		1							
Contributing to delinquency of female child	3	1		2						1
Declaring illegal dividend	2			2						
Decoying away child	2		1		1					
Defamation	5		2	3						
Desertion and non-support	40	9	10	21				9		
Disposing of mortgaged property	5	1	1	2	1					1
Distilling	131	63	22	45	1		63			
Disturbing public worship	5	2	1	2				1		1
Driving while intoxicated	18	6	1	11				3		3
Embezzlement	34	17	1	16			5	11	1	
Escape	1			1						
Escape from hard labor	11	10		1				10		
Failure to redeliver motor	10	6		4				5	1	
False pretense	19	10	1	7	1		3	1		6
False entry in bank books	5		2	3						
Forgery	112	56	3	52	1		15	27	13	1

CIRCUIT COURT OF JEFFERSON COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Gaming	7			7						
Grand larceny	361	212	27	120	2		173	39		
Habeas corpus	1			1						
Homicide	166	99	42	22	3	1	84	7	5	2
Interfering with meter on rented motor vehicle	1			1						
Incest	1		1							
Issuing worthless check	42	1	4	33	4			1		
Kidnapping	6			6						
Libel	1			1						
Malicious mischief	11	5	1	5				1		4
Miscegenation	1			1						
Obstructing R. R. train	1			1						
Obtaining board and lodging fraudulently	1	1						1		
Operating slot machine	8	4		4						4
Petit larceny	266	193	9	61	3			173	5	15
Presenting firearms	2		2							
Public drunkenness	100	69		31				22		47
Perjury	1			1						
Rape	11	1	6	4				1		
Receiving deposit after bank insolvent	9		1	8						
Reckless driving	60	10	12	29	9			4		6

Resisting officer	9			7	2					
Robbery	103	46	19	38		1	34	11		
Seduction	1		1							
Selling property purchased on lease sale contract	3			3						
Trespass	7		4	3						
Unlawful use of branded box	39			39						
Shooting into dwelling	2	2						2		
Violating barber commission law	8	3		2				2		1
Violating cosmetology law	3		1	2						
Violating child labor law	3	1		2						1
Violating game and fish law	53	30	10	13			5	3		22
Violating motor carrier act	2			2						
Violating prohibition law	506	157	57	281	11			96		61
Violating prohibition law---Transporting	89	46	9	31	3		46			
Violating revenue law	180	11	1	166	2			1		10
Violating stock law	1		1							
Totals	3339	1541	323	1424	47	2	696	578	32	233

Percentage of convictions, 43.15. Predominant crime, violating prohibition law.

CIRCUIT COURT OF LAMAR COUNTY

Abandonment	4	4						1		4
Abusive language	8	5		3						5
Assault and battery	13	8	1	4				2		7

CIRCUIT COURT OF LAMAR COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Peniten-tiary	Hard Labor	Jail	
Assault to murder	8	6		2			6			
Assault to ravish	1				1					
Assault to rob	2	2					2			
Arson	1	1					1			
Bigamy	1				1					
Burglary	14	11	1	1	1		11			
Carnal knowledge	3	1		2			1			
Carrying concealed weapon	2			2						
Concealing stolen property	1		1							
Distilling	16	13	1	2			13			
Disposing mortgaged property	3			1	2					
Disturbing religious worship	8		4	4						
Embezzlement	1	1					1			
Escaping jail	4			1	3					
False pretense	1				1					
Forgery	3	1			2		1			
Grand larceny	9	4		2	3		3	1		
Manslaughter	2	1	1				1			
Non-support	1	1						1		
Petit larceny	6	2		4					2	2
Public drunkenness	10	7		3						7

Reckless driving	1			1						
Shooting into dwelling	1	1								1
Violating Sunday gaming law	9	6		3						6
Violating prohibition law	25	15	4	5	1			2		15
Vagrancy	1			1						
Totals	159	90	13	41	15		40	7	2	47

Percentage of convictions, 56.60. Predominant crime, violating prohibition law.

CIRCUIT COURT OF LAUDERDALE COUNTY

Abusive language	2	2								2
Adultery	1			1						
Arson	5	5					5			
Assault	1	1						1		1
Assault with weapon	2	2						1		
Assault with intent to murder	7		2	5						
Assault with intent to ravish	3	3					2	1		
False pretense	2	1		1						1
Attempted robbery	2	2						2		
Bastardy	8	4		2	2			4		
Bigamy	1	1					1			
Burglary	16	8		2	6		8			
Carnal knowledge	4	1	1	1	1		1			
Carrying concealed weapon	2	1			1					1

CIRCUIT COURT OF LAUDERDALE COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Contempt of court	1			1						
Disposing of mortgaged property	1			1						
Distilling	30	18	8	4			9	9		
Disturbing public worship	1				1					
Driving car while intoxicated	2	1		1						1
Embezzlement	9	1	3	5			1			
False pretense	2	1		1				1		
Forfeiture	1	1								1
Forgery	7	3	2	2			2	1		
Gaming	4		4							
Grand larceny	8	1		4	3		1			
Homicide	10	8	2				8			
Non-support	2	1	1					1		
Petit larceny	9	8		1				4		4
Presenting firearms	3	1		1	1					1
Receiving stolen property	2	2						2		
Reckless driving	6	2	2	2				2		
Resisting officer	1			1						
Transporting liquor	1	1					1			
Vagrancy	14	4	1	4	5			3		1
Violating building law	1	1								1

Violating prohibition law	29	15	6	4	4			12		3
Totals	200	100	32	44	24		39	44		17

Percentage of convictions, 50. Predominant crime, violating prohibition law.

CIRCUIT COURT OF LAWRENCE COUNTY

Arson	1	1					1			
Assault to murder	9	3	3	3			2			1
Assault to ravish	3	1		2				1		
Attempt to burglarize	1	1								1
Bastardy	1		1							
Burglary	52	39	4	8	3		39			
Carnal knowledge	2	1	1				1			
Desertion and non-support	2	1		1						1
Disposing of mortgaged property	4			4						
Disposing of property under lien	1			1						
Distilling	63	38	5	19	1		38			
Embezzlement	1			1						
Forfeiture	2			2						
Forgery	2	1		1			1			
Grand larceny	17	7	4	4	1		6		1	
Homicide	12	2	4	6			2			
Manslaughter	1	1					1			
Peace proceedings	2			2						

CIRCUIT COURT OF LAWRENCE COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Putting poison in well	1		1							
Robbery	1	1					1			
Violating prohibition law	17	10	2	5			10			
Violating prohibition law—transporting	6	2	1	2	1		2			
Totals	201	109	26	61	6		104	1	1	3

Percentage of convictions, 54.22. Predominant crime, distilling.

CIRCUIT COURT OF LEE COUNTY

Abusive language	3	2		1				1		
Accepting bribe	1			1						
Arson	4	1		3			1			
Assault and battery	5	4		1				2		
Assault with weapon	7	7						5		1
Assault with intent to murder	15	7	3	5			7			

Assault with intent to ravish	1	1								1
Burglary	28	21	1	4	2		21			
Carnal knowledge	1			1						
Carrying concealed weapon	1		1							
Concealing stolen property	5	4			1		3			1
Distilling	77	64	7	5	1		64			
Embezzlement	2			2						
Escape jail	1	1						1		
Failure to stop after accident	2	1		1						
Forgery	2	1		1			1			
Grand larceny	18	14	2	2			14			
Homicide	19	14	4	1			14			
Malicious injury to property	1	1						1		
Perjury	1	1					1			
Petit larceny	7	5		1	1			4		1
Possessing still	4	4					4			
Presenting firearms	2	2								2
Rape	2	2					2			
Reckless driving	2	1		1				2		
Robbery	1	1					1			
Transporting liquor	13	10	1	2			10			
Violating prohibition law	12	3	2	7			3			
Totals	237	172	21	39	5		146	16		6

Percentage of convictions, 72.57. Predominant crime, distilling.

CIRCUIT COURT OF LIMESTONE COUNTY

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Peniten-tiary	Hard Labor	Jail	
Abusive language	2			2						
Arson	6	2		4			2			
Assault	1			1						
Assault with intent to murder	9	1	4	4			1			
Assault with weapon	11	9		2				7		2
Attempt to distill	1	1						1		
Bastardy	1		1							
Bigamy	1	1					1			
Burglary	34	20	9	5			20			
Buying cotton after dark	1			1						
Buying, receiving, concealing stolen property	3			3						
Carrying concealed weapon	3	2	1							2
Destroying property	1	1								1
Disposing mortgaged property	3			2	1					
Distilling	36	27	3	6			27			
Driving while intoxicated	3	1	1	1						1
Failure to stop after accident	1	1								1
Forgery	3	1	1	1			1			
Grand larceny	20	11	8	1			11			
Homicide	6	5	1				4	1		
Petit larceny	8	7	1					5		2

Public drunkness	7	2		5			1			1
Receiving stolen property	1			1						
Reckless driving	2	1		1						1
Robbery	5	2	3				2			
Seining	3			3						
Transporting five gallons whiskey	1			1						
Violating game law	5	1		4				1		
Violating prohibition law	21	14	2	5			2	9		3
Totals	199	110	35	53	1		72	24		14

Percentage of convictions, 55.27. Predominant crime, distilling.

CIRCUIT COURT OF LOWNDES COUNTY

Assault and battery	2	2						2		
Assault and battery with weapon	3	2		1				1		1
Assault to murder	4	4					4			
Assault to rob	2	2					2			
Burglary	13	7	1	2	3		7			
Carrying concealed weapon	3.	3						3		
Concealing stolen property	1	1					1			
Distilling	4	2		2			2	1		
Grand larceny	33	14		19			13	1		
Manslaughter	2	2					2			
Murder	6	2	1	1	2	1	1			

CIRCUIT COURT OF LOWNDES COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Petit larceny	16	12	2	2				10		2
Receiving stolen property	1			1						
Removing property under lien	1	1					1			
Robbery	3	2			1	2				
Selling property under lien	1	1					1			
Violating revenue law	1	1								1
Violating road law	1	1								1
Violating prohibition law	5	3		2				3		
Totals	102	62	4	30	6	3	34	21		5

Percentage of convictions, 60.78. Predominant crime, grand larceny.

CIRCUIT COURT OF MACON COUNTY

Aiding escape	1		1							
Arson	1	1					1			

Assault and battery	3	2		1					2
Assault and battery with weapon	1	1							1
Assault with intent to murder	9	6	2	1		6			
Assault with weapon	3	3					2		1
Assault with intent to rob	1	1				1			
Attempt to break jail	2	2				2			
Bastardy	1	1					1		
Bigamy	1	1				1			
Burglary	30	24	2	4		24			
Carrying concealed weapon	1	1							1
Defacing property	1			1					
Disposing of mortgaged property	6	5	1				5		
Distilling	6	3	1	2		3			
Escaping jail	1	1				1			
Failure to return auto	1		1						
Forgery	2	2				2			
Grand larceny	24	10	7	6	1	10			
Homicide	7	6	1			6			
Petit larceny	2	2					1		1
Public drunkness	2	2							2
Rape	1	1				1			
Robbery	1	1				1			
Transporting liquor	5	3		2		3			
Violating highway law	1	1					1		
Violating prohibition law	2	1		1			1		
Totals	116	81	16	18	1	62	11		8

Percentage of convictions, 69.82. Predominant crime, burglary.

CIRCUIT COURT OF MADISON COUNTY

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Arson	1	1					1			
Affray	3	2		1				2		
Assault and battery	47	13	9	19	6		3	4		6
Assault with weapon	8	1	2	2	3			3		
Assault with intent to murder	14	7	2	4	1		3	3		1
Adultery	16	3	2	7	4			2		
Attempt to bribe	2			1	1					
Assault national guard	2	2								2
Assault	5	1		3	1					1
Burglary and grand larceny	36	11	6	11	8		11			
Burglary	22	12	2	5	3		9			2
Bastardy	5	2		1	2		1	1		
Bribery	1				1					
Carrying concealed weapon	42	14	11	9	8			5		6
Concealing stolen property	14	8	1	5			5	1		
Carnal knowledge	6	3		2	1		3			
Disturbing public worship	1	1								1
Disposing of mortgaged property	11	1	4	2	4			1		
Defamation	2	2						1		1
Driving while intoxicated	19	5	3	4	7			2		2
Escape from jail	1	1								1

Embezzlement	6	1	2	1	2		1		
False pretense	7	3		3	1		2		
Forgery	9	4	1	2			3	2	
Forfeiture bond	1				1				
Grand larceny	26	10	3	10	3		8	1	
Holding possession of property	2	2							2
Incest	1			1					
Leaving scene of wreck	1				1				
Murder	8	6		2			5		
Manslaughter	5	5					6		
Manufacturing and possessing still	31	13	6	10	2		6	5	2
Malicious Mischief	3	2		1				1	1
Non-support	1		1						
Obscene language	51	15	6	16	14			11	1	3
Public drunkenness	19	6	3	7	1			1		6
Perjury	4				4				
Petit larceny	45	26	7	8	4			20		4
Robbery	1	1						1		
Resisting an officer	5			5						
Removing mortgaged property	1		1							
Reckless driving	25	11	2	6	6			4		8
Seduction	1		1							
Temporary use of property	7	4	1	1	3			2		1
Transporting liquor	18	7	2	6	3		5	1		1
Unlawfully riding train	2	2						2		
Vagrancy	60	14	3	33	10			7		8
Violating road law	2	1	1							1
Violating gaming law	39	18	2	19				3		15
Violating prohibition law	373	153	53	125	42			80		63
Violating check law	10	5	1	4				2		3

CIRCUIT COURT OF MADISON COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Violating license law	69	43	7	8	11			21		21
Violating section 292 agricultural code	2			2						
Violating section 51 state code	1			1						
Violating section 86 state code	2	2								2
Violating section 88 state code	5	1	2		2					1
Violating section 90 state code	1			1						
Viclating section 91 state code	12			11	1					
Violating auto law	7	3	2		2					2
Violating stock law	2		2							
Violating election law	24			24						
Violating game law	4	1		3						1
Totals	1151	451	151	386	163		72	189	1	168

Percentage of convictions, 39.18. Predominant crime, violating prohibition law.

CIRCUIT COURT OF MARENGO COUNTY

Abusive language	3	1		2						1

Assault	1	1						2		
Assault and battery	5	5						1		1
Assault and battery with weapon	13	8	4					1		15
Assault to murder	3	3					3			
Bastardy	2		2							
Burglary	19	17		2			15			
Burglary and grand larceny	6	4	1	1			4			
Carnal knowledge	1	1					1			
Carrying concealed weapons	13	3		9				2		1
Disposing mortgaged property	4	2	1	1				1		
Embezzlement	1			1						
False pretense	3	1		2				1		
Forgery	5	3		2			3			
Grand larceny	10	4	3	4			5			
Manslaughter	5	5					2	1		
Manufacturing and possessing still	35	30		5			26	1		3
Murder	24	13	7	1	2		14			
Petit larceny	12	7		5				3		4
Receiving stolen property	4			4						
Reckless driving	4	1	2	1	1					1
Removing property under lien	1			1						
Transporting liquor	1	1					1			
Public drunkenness	1	1								1
Violating prohibition law	21	11	3	8				1		7
Violating gaming law	7	2	4	1						2
Violating game law	5			5						
Violating road law	1			1						
Violating check law	1		1							
Violating revenue law	1	1								1

CIRCUIT COURT OF MARENGO COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Totals	212	125	28	56	3		74	14		37

Percentage of convictions, 58.96. Predominant crime, violating prohibition law.

CIRCUIT COURT OF MARION COUNTY

Abusive language	13	6		7						6
Adultery	1		1							
Assault and battery	17	9	1	7						9
Assault with weapon	2	1		1						1
Assault to murder	2	2					2			
Assault to ravish	1			1						
Bastardy	1	1								1
Bigamy	1		1							
Burglary	18	13	1	4			13			
Carnal knowledge	1	1					1			
Carrying concealed weapon	4	2	1	1						2

Defacing building	2	2								2
Disturbing religious worship	1	1								1
Disposing mortgaged property	2	1	1							1
Disturbing school	2	1		1						1
Distilling	16	12	3	1			9			3
Driving car while intoxicated	1	1								1
Escaping jail	1			1						
Failing to stop after accident	1	1								1
Fraud	1			1						
Grand larceny	3	2		1			2			
Injury to personal property	1	1								1
Manslaughter	3		1	2						
Petit larceny	2	1	1							1
Murder	5	3	2				3			
Public drunkenness	6	3	1	2						3
Reckless driving	5	2	1	2						2
Robbery	1	1					1			
Seduction	3			3						
Selling bad meat	1		1							
Unlawfully killing cow	1	1								1
Violating game law	1		1							
Violating road law	3		1	2						
Violating auto license law	1			1						
Violating prohibition law	44	29	4	9	2					29
Totals	168	97	22	47	2		31			66

Percentage of convictions 57.73. Predominant crime, violating prohibition law.

CIRCUIT COURT OF MARSHALL COUNTY

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Abusive language	3		1	2						
Adultery	4		1	3						
Arson	2				2					
Assault and battery	6	4	1	1				3		1
Assault with intent to murder	6		1	4	1					
Assault with intent to ravish	1			1						
Attempt to commit forgery	2	2						2		
Bastardy	3	1			2					1
Burglary	15	4	1	10			4			
Carnal knowledge	5	1		4			1			
Carrying concealed weapon	3			3						
Compounding felony	1			1						
Distilling	11	4		7			4			
Driving car while intoxicated	8	1		7						1
Disposing of mortgaged property	4	1		3				1		
Disposing of property under lien	1			1						
Disturbing religious worship	1	1						1		
Embezzlement	1			1						
False pretense	10	2		8			1	1		
Failure to stop after accident	4		1	3						
Forgery	14	5	1	7	1		5			

Grand larceny	15	6	1	8			6			
Homicide	11	6	4	1			4	2		
Malicious injury to animal	5	1		4				1		
Petit larceny	11	1	1	9					1	
Public drunkness	5	3		2				2		1
Rape	1			1						
Receiving stolen property	1			1						
Reckless driving	1		1							
Removing farm products after dark	3			3						
Seduction	3	1		2			1			
Transporting liquor	2	2					2			
Using animal without consent	1		1							
Vagrancy	4			4						
Violating blue sky laws	1	1					1			
Totals	169	47	15	101	6		29	13	1	4

Percentage of convictions, 27.81. Predominant crimes, burglary, and grand larceny.

CIRCUIT COURT OF MOBILE COUNTY

Abusive language	20	15	1	4				11	4	
Adultery and fornication	1		1							
Affray	9	3	2	1	3			3		
Arson	1	1					1			
Assault	1	1						1		1

CIRCUIT COURT OF MOBILE COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Assault and battery	69	54	2	4	9			43	10	1
Assault with weapon	27	22	1	1	3			22	1	
Assault to murder	37	28	5	4			26	2		
Assault to rape	6	5		1			4	1		
Assault to rob	2	2					2			
Assisting felon to escape	1	1					1			
Attempt to escape	3	1			2					1
Attempt to distill	19	19						17	1	1
Attempt to commit burglary	3	2			1			2		
Attempt to transport liquor	1	1						1		
Bastardy	8		2	6						
Blackmail	3	2		1					2	
Burglary	127	107	8	6	6		101	6		
Burglary of railroad car	3	2		1				2		
Burglary—tools possession of	1	1						1		
Carnal knowledge	6	2	1	3			2			
Carrying concealed weapon	11	10			1			8	2	
Conspiracy	1	1						1		
Crime against nature	3	2	1				2			
Cruelty to animals	2	1	1							1
Defamation	1			1						

Distilling	34	26	4	1	3		26			
Disturbing religious worship	4	2	1	1				2		
Disposing property under lien	2	1		1					1	
Driving while intoxicated	46	35	1	7	3			30	2	3
Embezzlement	6	3		1	2		2	1		
False pretense	3	3					1		2	
Forgery	69	57		4	8		52	5		
Grand larceny	81	61	7	3	10		55	6		
Homicide	38	32	5		1	2	27	3		
Intimidating witness	1	1						1		
Libel	1			1						
Malicious injury to property	10	8		1	1			5	2	1
Offenses not specified	29	11		18				10	1	
Operating slot machine	2	2						1		1
Petit larceny	58	49	3	3	3			41	8	
Presenting firearms	2	1	1					1		
Public drunkenness	6	5			1			4	1	
Perjury	2				2					
Rape	1	1				1				
Reckless driving	30	25	1	3	1			14	7	4
Receiving stolen property	24	17		7			4	12	1	
Resisting officer	3	3						3		
Robbery	32	28			4		28			
Shooting along highway	1			1						
Transporting liquor	30	26	1	1	2		14	12		
Trespass	10	9		1				8		
Unlawful injury to property	1	1								1
Using auto without owner's consent	14	13	1					11	1	1
Vagrancy	22	14	2	5	1			3		
Violating check law	19	17	1	1				6		

CIRCUIT COURT OF MOBILE COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Peniten-tiary	Hard Labor	Jail	
Violating gaming law	3			3						
Violating auto law	21	18	1	1	1		1	14	3	1
Violating game and fish law	28	11	3	3	11			11		
Violating election law	3	2			1			1		
Violating license law	1			1						
Violating stock law	6	3		2	1			3		
Violating Sunday law	1		1							
Violating prohibition law	181	115	22	23	21			103	10	2
Totals	1191	884	80	126	102	3	349	431	59	19

Percentage of convictions, 74.22. Predominant crime, violating prohibition law.

CIRCUIT COURT OF MONROE COUNTY

Assault and battery	5	3		2				2		1
Assault and battery with weapon	5	5						5		

Assault to murder	5	3		2			3		
Abusive language	5	4		1					4
Adultery	2			2					
Arson	1	1					1		
Burglary	22	18	2	2			18		
Carnal knowledge	3	3					2		
Distilling	7	3	2	1	1		2		1
Driving auto while intoxicated	1	1					1		
Disturbing religious worship	1		1						
Escape	1	1					1		
Forgery	2	1		1			1		
Grand larceny	9	5	2	2			5		
Injury to property	1	1							1
Manslaughter	5	4	1				5		
Murder	4	3		1			2		
Malicious killing animals	1		1						
Petit larceny	6	3		3			3		
Possession of still	6	5	1				5		
Public drunkenness	3	2		1			1		1
Presenting firearms	1	1					1		
Selling property under lien	2	1		1			1		
Transporting liquor	2	2					2		
Violation prohibition law	14	8	3	3			7		1
Violation road law	1			1					
Violation game law	8	1	5	2					
Violation license law	2				2				
Totals	125	79	18	25	3		44	24	9

Percentage of convictions, 63.20. Predominant crime, burglary.

CIRCUIT COURT OF MONTGOMERY COUNTY

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Abusive language	1			1						
Adultery	1			1						
Arson	4	2	2				2			
Assault and battery	51	50		1				42		8
Assault to murder	34	24	3	7			24			
Assault to ravish	2	1	1					1		
Assault to rob	2			2						
Attempt to commit burglary	2	2						2		
Bigamy	1	1					1			
Bribery	1			1						
Burglary	115	98	7	10			98			
Carnal knowledge	5	2		3			2			
Carrying concealed weapon	10	3		7				2	1	
Conspiracy	1			1						
Defacing public record	2		2							
Driving while intoxicated	1	1								1
Embezzlement	13	7	2	4			7			
False pretense	17	12	1	4			12			
Forgery	21	20		1			20			
Grand larceny	290	247	12	31			247			
Homicide	29	19	5	5			19			

Manufacturing liquor	78	65	5	8			65			
Non-support	4	1	1	2						1
Operating slot machine	6	2		4						2
Petit larceny	20	19	1				12			7
Presenting firearms	2			2						
Rape	2	2					2			
Receiving stolen property	11	6	1	4			4			2
Reckless driving	2	2								2
Resisting officer	1	1						1		
Robbery	31	22	6	3			22			
Seduction	1			1						
Temporary use of auto of another	2	2							1	1
Transporting whiskey	54	41		13			41			
Throwing missle into car	1	1					1			
Vagrancy	3			3						
Violating game law	1			1						
Violating highway law	2	1		1						1
Violating narcotic law	3			3						
Violating prohibition law	72	23	2	47				15		8
Violating revenue law	1	1								1
Totals	900	678	51	171			579	63	2	34

Percentage of convictions, 75.33. Predominant crime, grand larceny.

CIRCUIT COURT OF MORGAN COUNTY

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Arson	7	1	1	5			1			
Assault to murder	14	5	5	2	2		2	1		2
Assault to ravish	1	1					1			
Bastardy	3	1	1		1			1		
Burglary	39	33	2	4			33			
Bigamy	2	1			1		1			
Carnal knowledge	1		1							
Disposing mortgaged property	4		2	2						
Distilling	15	10	3		2		10			
Embezzlement	1			1						
False pretense	5		1	4						
Forgery	8	4		4			4			
Grand larceny	34	17	3	11	4		12		4	
Homicide	14	11	2	1			11			
Petit larceny	1	1						1		
Receiving deposit when bank insolvent	10			10						
Robbery	5	5					5			
Seduction	2			2						
Transporting five gallons liquor	5	4		1			2			2
Violating banking laws	29			29						
Violating security law	2			2						

Totals	202	94	21	78	10		82	3	4	4

Percentage of convictions, 46.53. Predominant crime, burglary.

CIRCUIT COURT OF PERRY COUNTY

Abusive language	2	2						2		2
Adultery	4	1		2	1			1		1
Assault and battery	2	1		1				1		1
Assault and battery with weapon	13	12	1					6		12
Assault to rob	1				1					
Assault to murder	14	8	1	5			8			
Arson	1		1							
Bastardy	1				1					
Burglary	9	6	1		2		6			
Carrying concealed weapon	9	5		2	2			3		5
Criminal provocation	1			1						
Disposing property under lien	4	3	1				2			1
Distilling	19	13	1	5			13			
Disturbing school	1				1					
Driving while intoxicated	1			1						
Escape from jail	1	1								1
Escape from hard labor	2	1			1			1		
False pretense	5	3		2			1	1	1	
Forgery	14	9			6		8	1		

CIRCUIT COURT OF PERRY COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Grand larceny	13	12					12	2		
Leaving scene of accident	1		1							
Manslaughter	5	5					3	2		1
Murder	5	1		3	1					
Non-support of children	1	1						1		
Petit larceny	6	5		1				3	2	1
Possessing still	1	1					1			
Presenting firearms	1				1					
Public drunkenness	4	2	1	1						1
Receiving stolen property	2	1	1							1
Reckless driving	2	2								2
Seduction	1			1						
Transporting whiskey	1		1							
Trespass after warning	1				1					
Violating check law	2	1			1					1
Violating prohibition law	12	7	1	3	1		1	2		7
Violating revenue law	13	4	1	8						4
Totals	175	107	12	36	20		55	26	3	41

Percentage of convictions, 61.14. Predominant crime, distilling.

CIRCUIT COURT OF PICKENS COUNTY

Abusive language	4	3		1						1
Assault and battery	4	4						1		2
Assault and battery with weapon	6	6						1		2
Assault to murder	4	3	1	1			2			
Attempt to manufacture and possessing still	28	24	4				16			8
Attempt to break jail	1	1						1		
Burglary	12	9	1	2			10			
Burglary and grand larceny	3	3					3			
Carrying concealed weapon	2			2						
Disposing mortgaged property	2	1	1					1		
False pretense	2	1		1						1
Forgery	3	3								
Manslaughter	11	10	1				10			
Murder	6	5	1				5			
Petit larceny	11	11						6		5
Public drunkenness	1			1						
Reckless driving	1		1							
Robbery	1	1					1			
Violating check law	3		3	3						
Violating prohibition law	11	8		1				6		3
Totals	116	93	13	12			47	16		22

Percentage of convictions, 80.17. Predominant crime, violating prohibition law.

CIRCUIT COURT OF PIKE COUNTY

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Abusive language	4	4						4		
Adultery	2			2						
Arson	1	1					1			
Assault and battery	10	9	1					8		1
Assault with intent to murder	14	9	3	2			9			
Assault with intent to ravish	1		1							
Bastardy	2	2						2		
Burglary	17	15	1	1			15			
Carnal knowledge	4	1	2	1			1			
Carrying concealed weapon	6	4	2					3		1
Concealing stolen property	1	1						1		
Desertion and non-support	1				1					
Disturbing public worship	1			1						
Driving car while intoxicated	4	4						4		
Embezzlement	24			24						
False pretense	3			2	1					
Forgery	6	4		2			4			
Grand larceny	17	10	4	3			10			
Homicide	14	11	2	1			11			
Intimidating witness	1			1						
Mayhem	2	2					2			

Operating slot machine	1			1						
Perjury	1		1							
Petit larceny	6	2	1	2	1			2		
Possessing burglar tools	3	1		1	1			1		
Possessing still	12	10	1	1			10			
Planting poison on property	1		1							
Public drunkness	3	3						2		1
Reckless driving	2	1			1			1		
Resisting officer	2			2						
Seduction	1				1					
Seining	2		2							
Transporting liquor	8	3	3	2			3			
Trespass	1	1								1
Vagrancy	3		1	2						
Violating check law	3	2	1					1		1
Violating game law	2		2							
Violating prohibition law	12	6	2	4				6		
Totals	198	106	31	55	6		66	35		5

Percentage of convictions, 53.59. Predominant crime, violating prohibition law.

CIRCUIT COURT OF RANDOLPH COUNTY

Abusive language	3	2		1				1		1
Arson	1		1							

CIRCUIT COURT OF RANDOLPH COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Assault	1	1								1
Assault and battery	2	1		1						1
Assault with intent to murder	6	2	1	2	1		2			
Assault with weapon	12	11	1					7		4
Bastardy	2	2						1		1
Burglary	15	10	2	3			10			
Carnal knowledge	2	2					2			
Carrying concealed weapon	1			1						
Concealing stolen property	6	5		1			4	1		
Destroying property	1		1							
Desertion and non-support	2			2						
Distilling	25	20	3	2			18	2		
Embezzlement	5		4	1						
False pretense	1		1							
Forgery	3	1	1	1			1			
Grand larceny	10	3	2	4	1		3			
Homicide	7	7					7			
Peace proceedings	1			1						
Petit larceny	5	3		2				2		1
Rape	4	1	3				1			
Reckless driving	1	1								1

Violating game law	3		1	2						
Violating prohibition law	16	10	1	4	1			3		7
Totals	135	82	22	28	3		48	17		17

Percentage of convictions, 60.74. Predominant crime, distilling.

CIRCUIT COURT OF RUSSELL COUNTY

Arson	1		1							
Adultery	4	4						3		1
Assault and battery	16	14	2					6	4	4
Assault to murder	8	4	1	3			4			
Attempt to commit burglary	2	2								2
Bigamy	2	1		1				1		
Bribery	6				6					
Burglary	24	16	2	2	4		16			
Carnal knowledge	1		1							
Carnal knowledge child under 12	1	1					1			
Carrying concealed weapon	8	6		1	1			3		3
Conspiracy	1				1					
Discharging gun on highway	2	2						1		1
Disposing mortgaged property	6		1	1	4					
Distilling	25	10	9	5	1		10			
Driving while intoxicated	1	1						1		
Embezzlement	5	2	3				1	1		

CIRCUIT COURT OF RUSSELL COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
False pretense	12	4	1		7		3	1		
Forgery	1	1					1			
Gaming	4	3		1						3
Grand larceny	23	11	4	6	2		11			
Homicide	8	3	4	1			3			
Petit larceny	11	4	4	1	2			3		1
Presenting firearms	4	2		1	1			2		
Perjury	2		1		1					
Rape	1		1							
Reckless driving	5	3	1	1				2		1
Robbery	2	2					2			
Transporting five gallons whiskey	2	1		1			1			
Trespass	3	1	2					1		
Vagrancy	26	3	3	19	1					3
Violating game law	15	2	12	1						2
Violating prohibition law	79	41	23	14	1			9		32
Violating highway law	1	1						1		
Violating revenue law	2	2						1		1
Totals	314	147	76	59	32		53	36	4	54

Percentage of convictions, 46.81. Predominant crime, violating prohibition law.

CIRCUIT COURT OF ST. CLAIR COUNTY

Abusive language	7	1	2	4						1
Accepting bribe	1			1						
Assault and battery	16	6	2	9			1			5
Assault and battery with weapon	2	1						1		
Assault to murder	6	2		4			1	1		
Assault to rob	1	1					1			
Assault to ravish	1	1					1			
Arson	1		1							
Bastardy	1		1							
Burglary	1			1						
Burglary and grand larceny	31	20	1	9	1		20			
Carnal knowledge	5	1	1	3			1			
Carrying concealed weapon	8	3	2	3						3
Distilling and possession	19	10		9	2		8			1
Distilling	16	12	2	2			9			
Disturbing religious worship	2	1		1						1
Driving while intoxicated	5	3		2				1		2
False pretense	1	1								1
Forgery	2			2						
Grand larceny	2	1		1			1			
Manslaughter	1	1					1			
Murder	11	5	4	2		1	3			
Non-support	1	1					1			

CIRCUIT COURT OF ST. CLAIR COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Presenting firearms	1			1						
Petit larceny	14	9	1	4			1	5	1	7
Possessing still	6	2	1	3			2			
Public drunkenness	2		1	1						
Practicing medicine without license	10	2		8						2
Robbery	1				1					
Reckless driving	1	1								1
Resisting officer	4	1	2	1						1
Seduction	1			1						
Selling mortgaged property	5		2	4						
Transporting liquor	2	1		1						1
Trespass	1			1						
Vagrancy	3			3						
Violating game law	2	1	1							1
Violating road law	2			2						
Violating prohibition law	43	21	5	15	2		1	8		15
Totals (Incomplete)	239	109	29	98	6	1	52	16	1	42

Percentage of convictions, 45.60. Predominant crime, violating prohibition law.

CIRCUIT COURT OF SHELBY COUNTY

Abusive language	10	4		6				1	3
Adultery	2	1		1				1	
Assault and battery	1	1						1	
Assault with weapon	6	2	1	3				2	
Assault to murder	10	6	1	2	1		6		
Attempt to distill	9	9							9
Blackmail	1			1					
Burglary	25	20	4	1			20		
Concealing stolen property	2	2					1	1	
Cruelty to animal	1			1					
Disposing mortgaged property	4		2	2					
Distilling	62	38	8	8	8		38		
Disturbing religious worship	5	2	1	2					2
Driving while intoxicated	2	1		1			1		
Failure to work road	2			1	1				
False pretense	1	1					1		
Forgery	2	1	1				1		
Grand larceny	14	4	3	7			4		
Homicide	12	9	2	1		1	7	1	
Petit larceny	11	9	1	1				5	4
Possessing liquor	26	10	10	6				9	1
Presenting firearms	1	1						1	
Public drunkness	1			1					
Reckless driving	3	2		1				2	
Robbery	6	4	2				4		
Transporting five gallons whiskey	4	1	1		2		1		
Trespass	1	1							1

CIRCUIT COURT OF SHELBY COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Violating game law	2		2							
Violating school law	1			1						
Violating stock law	1			1						
Totals	228	129	39	48	12	1	84	24		20

Percentage of convictions, 56.57. Predominant crime, distilling.

CIRCUIT COURT OF SUMTER COUNTY

Assault and battery	14	11	1	2				7		4
Assault and battery with weapon	1	1						1		
Assault to murder	21	15	1	5			7	2		6
Attempt to manufacture liquor	1	1								1
Arson	1									
Burglary	17	15		2			15			
Burglary and grand larceny	9	6		3			3			

Bail forfeiture made absolute	6									2
Carrying concealed weapon	8	4		4				3		1
False pretense	2			2						
Grand larceny	11	9		1			9			
Manslaughter	6	5			1		5			
Murder	14	8	1	4		3	4			
Manufacturing liquor and possessing still	30	19	2	9			16			1
Petit larceny	6	4		2				2		2
Rape	2	1	1					1		
Robbery	2	1					1			
Selling mortgaged property	2	1		1				1		
Using firearms	1		1							
Violating bank law	11			2	9					
Violating game law	1			1						
Violating prohibition law	13	8	1	3				5		3
Totals	179	109	8	41	10	3	60	22		20

Percentage of convictions, 60.89. Predominant crime, violating prohibition law.

CIRCUIT COURT OF TALLADEGA COUNTY

Abusive language	2	1		1						1
Adultery	2	2						2		
Aiding prisoner to escape	1	1					1			
Arson	2		2							

CIRCUIT COURT OF TALLADEGA COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Assault with weapon	5	5						4		1
Assault with intent to murder	2	2						2		
Assault with intent to ravish	2	2					2			
Attempt to commit felony	2	2						2		
Bastardy	1	1						1		
Burglary	30	27	2	1			27			
Carnal knowledge	1			1						
Defacing public property	1	1						1		
Distilling	18	14	1	3			14			
Defacing public property	1	1						1		
Embezzlement	1			1						
Forgery	3	3					3			
Gaming	1		1							
Grand larceny	24	24					24			
Homicide	4	4					4			
Petit larceny	3	3						2		1
Rape	1	1				1				
Transporting liquor	3	2	1				2			
Trespass	1		1							
Vagrancy	5			5						
Violating check law	2	1	1					1		

Violating prohibition law	25	19	4	2			2	11		6
Totals	143	116	13	14		1	79	27		9

Percentage of convictions, 81.11. Predominant crime, violating prohibition law.

CIRCUIT COURT OF TALLAPOOSA COUNTY

Abusive language	7	1	1	5						1
Aiding escape	1		1							
Assault and battery	4			3	1					
Assault with intent to murder	7	2	2	3			2			
Assault with intent to ravish	1			1						
Assault with weapon	6	3	1	2				1		2
Bastardy	3	1	1		1		1			
Bigamy	1	1					1			
Burglary	12	10		2			10			
Carrying concealed weapon	2		2							
Desertion and non-support	1	1						1		
Disposing of mortgaged property	1			1						
Distilling	16	9	2	4	1		9			
Driving while intoxicated	2	1		1						1
Embezzlement	4	1		3			1			
Failure to return car	1			1						
Failure to work road	1		1							
False entry	1		1							

CIRCUIT COURT OF TALLAPOOSA COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
False pretense	2	1	1				1			
Grand larceny	17	14	1	2			14			
Homicide	4	3		1			3			
Malicious injury to animal	1		1							
Malicious injury to property	1			1						
Petit larceny	2	1		1						1
Public drunkness	3			3						
Receiving stolen property	2	1			1		1			1
Reckless driving	3	1	2							
Seduction	1			1						
Transporting liquor	2	1		1			1			
Trespass	1		1							
Unlawful branding animal	1			1						
Violating banking law	8	5		3			5			
Violating game law	1		1							
Violating narcotic law	1			1						
Violating prohibition law	10	3	2	4	1		1	2		
Violating revenue law	8	5		3			5			
Totals	139	65	21	48	5		55	4		6

Percentage of convictions, 46.76. Predominant crime, violating prohibition law.

CIRCUIT COURT OF TUSCALOOSA COUNTY

Abusive language	4	1	3					1		
Affray	2	1		1				1		
Arson	3	2		1			2			
Assault	5			5						
Assault and battery	23	16	2	4	1			10		6
Assault and battery with weapon	11	7	1	2	1			5		2
Assault with intent to murder	12	7	4	1				7		
Assault with weapon	13	5	2	5	1			2		3
Attempt to distill	32	32						13		19
Attempt to transport liquor	1	1						1		
Bastardy	4	1		3				1		
Burglary	48	32	3	11	2		32			
Buying cotton after dark	1	1								1
Carnal knowledge	4	1		3			1			
Carrying concealed weapon	3	1	2							1
Concealing stolen property	11	6	1	4			2	4		
Contempt of court	1	1							1	
Decoying away a child	1			1						
Desertion and non-support	3	1		2						1
Destroying growing crop	1			1						
Disposing mortgaged property	11	2	1	8				1		1
Distilling	72	50	12	7	3		50			
Disturbing public worship	1		1							
Driving car while intoxicated	2		1	1						

CIRCUIT COURT OF TUSCALOOSA COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Escape	1	1						1		
Failure to redeliver auto	4	3		1				3		
False pretense	10	6		3	1		1	5		
Failure to keep books	1			1						
Failure to pay board	1	1						1		
Forgery	23	14	4	4	1		10	2		2
Gaming in public place	2			2						
Grand larceny	55	43	5	7			43			
Hiring auto intent defraud	1	1						1		
Homicide	25	14	3	7	1		14			
Malicious carrying off boat	1		1							
Malicious injury to property	8	2		6				2		
Obstructing Public Justice	2	2						2		
Petit larceny	41	28	7	6				26	2	
Presenting firearms	2		1	1						
Public drunkenness	6	3		3				2		1
Receiving stolen property	1			1						
Reckless driving	8	2	1	5				2		
Robbery	8	5	2	1			4	1		
Seduction	1			1						
Sodomy	1			1						

Transporting liquor	7	3		3	1			3		
Transporting liquor, five gallons	18	12	1	5			12			
Trespass	12	2		10				1	1	
Unlawful use of car	1	1						1		
Using female immoral purpose	2			2						
Violation check law	3	2		1				2		
Violation game law	2	1		1						1
Violation highway law	9	4	1	4				2		2
Violating prohibition law	57	27	9	21			5	15		7
Totals	582	345	68	157	12		176	118	4	47

Percentage of convictions, 59.27. Predominant crime, distilling.

CIRCUIT COURT OF WALKER COUNTY

Abusive language	20	6	11	3						6
Assault and battery	34	19	6	9				1		18
Assault with intent to injure	1			1						
Assault with weapon	9	4	2	3				1		3
Assault to murder	24	18	1	3	2		10	3		8
Assault to ravish	2			2						
Attempt to burglarize	1	1						1		
Attempt to break jail	1	1						1		1
Bastardy	1	1								1

CIRCUIT COURT OF WALKER COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Burglary	12	11	1				10	1		
Burglary and grand larceny	76	61	7	5	3		57	3		1
Carnal knowledge	5	2	2	1			2			
Carrying concealed weapon	10	2	3	5				1		2
Carrying on lottery	3	2		1						2
Conspiracy to commit a felony	2	2						2		
Cutting and removing timber	1		1							
Decoying child	1	1								1
Destroying public records	2		2							
Distilling	14	10	2	1			10			
Disturbing religious worship	5	1		3	1					1
Extortion	3			3						
False pretense	2			2						
Forgery	12	8		2	2		7			
Grand larceny	12	7	2	1	2		7			
Manslaughter	8	7		1			4	1		2
Murder	14	10	2	1	1	1	9			
Non-support	5	2	1	2				2		
Obscenity	1	1								1
Operating slot machine	1	1								1
Operating car while intoxicated	2		1	1						

Petit larceny	23	15	6	2				7	1	9
Public drunkenness	23	9	4	9	1					9
Reckless driving	3	2	1							2
Receiving stolen property	4	3	1				2	1		
Resisting arrest	2	1		1						1
Robbery	7	4	2		1		4			
Seduction	5			5						
Selling mortgaged property	1			1						
Transporting whiskey	3	3					3			
Trespassing	7	5		2				1		4
Unlawfully presenting firearms	3	1		2						1
Vagrancy	1	1								1
Violating check law	5	1		4						1
Violating game law	4			4						
Violating license law	10	2	1	7				1		1
Violating road law	3		3							
Violating school law	1			1						
Violating Sunday gaming law	2			2						
Violating prohibition law	82	42	12	26	2			17		26
Totals	473	267	74	116	15	1	125	44	1	103

Percentage of convictions, 56.44. Predominant crime, violating prohibition law.

CIRCUIT COURT OF WASHINGTON COUNTY

Abusive language	6	3		1	2			3		

CIRCUIT COURT OF WASHINGTON COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Adultery	1	1						1		
Arson	10	8	2				1	4		3
Assault and battery	7	4	1	1	1			2		2
Assault to murder	1		1							
Assault with weapon	4	3	1					1		2
Attempt to distill	1	1								1
Bastardy	1	1						1		
Bigamy	1				1					
Burglary	5	5					5			
Carrying concealed weapon	4		3		1					
Defacing public property	1		1							
Discharging gun into house	1		1							
Disposing mortgaged property	1			1						
Distilling	16	13	3				13			
Embezzlement	2			1	1					
Failure to stop after accident	1		1							
False pretense	1		1							
Forgery	2				2					
Grand larceny	6	1	1		4		1			
Homicide	6	4		1	1		3	1		
Incest	1	1					1			

Miscegenation	1			1						
Petit larceny	9	6			3			4		2
Public drunkness	1		1							
Racing horse on public road	1	1								1
Seduction	1	1					1			
Vagrancy	1			1						
Violating check law	3	1			2					1
Violating prohibition law	21	5	11	3	2			2		3
Violating highway law	2	1	1							1
Violating sanitary law	1				1					
Wanton injury to animal	2		1		1					
Wanton killing of animal	1			1						
Totals	123	60	30	11	22		25	19		16

Percentage of convictions, 49.06. Predominant crime, violating prohibition law.

CIRCUIT COURT OF WILCOX COUNTY

Abusive language	2	2						2		2
Assault and battery	10	9		1				4		9
Assault to murder	4	3			1		3			
Burglary	26	24	1	1			24			
Carrying concealed weapon	3			2	1					
Distilling	3	2		1			2			
Embezzlement	2	1		1					1	1

CIRCUIT COURT OF WILCOX COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Escape from jail	1	1						1		1
Escape	4	4						4		
False pretense	1	1					1			
Forgery	31	2			29		2			
Grand larceny	17	16		1			16			
Manslaughter	1	1					1			
Murder	2	2					2			
Petit larceny	8	7		1				3	1	6
Possessing still	2	1		1			1			
Rape	1	1					1			
Reckless driving	1	1								1
Receiving stolen property	2	1		1				1		
Trespass after warning	2	1		1						1
Transporting five gallons whiskey	1	1					1			
Violating timber law	1			1						
Violating road law	1	1								1
Violating prohibition law	36	22	1	6	7			12	1	15
Totals	162	104	2	18	38		54	27	3	37

Percentage of convictions, 63.82. Predominant crime, violating prohibition law.

CIRCUIT COURT OF WINSTON COUNTY

Arson	3			3						
Assault and battery	11	8		3				2		6
Abusive language	1			1						
Attempt to distill	3	3								3
Assault with intent to murder	4	1		1	2		1			
Burglary	18	13	1	3	1		13			
Bastardy	3		1	2						
Carnal knowledge	4	1		2	1		1			
Carrying concealed pistol	2	1	1							1
Concealing stolen property	2	1	1							1
Disturbing religious worship	5	4			1					4
Distilling	56	41	6	9			38			2
Destroying public building	2	2								2
Decoying child from parent	1			1						
Driving while intoxicated	2	1		1						1
False pretense	2			2						
Forgery	2			1	1					
Fraud	3	1		1						1
Grand larceny	18	16		2			15			1
Injury to public road	1	1								1
Murder	4	4	1				4			
Petit larceny	8	5	1	2				3	1	1
Public drunkenness	15	6		8				1		6
Reckless driving	1		1							
Resisting arrest	3	1	1	1				1		
Seduction	3			1	2					
Selling mortgaged property	3	1		2						1

CIRCUIT COURT OF WINSTON COUNTY—(Continued)

CHARACTER OF OFFENSE	No. of Cases Disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or Withdrawn	Number of Sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Transporting liquor	11	3	3	5			1			1
Vagrancy	3			2	1					
Violating prohibition law	37	25	3	6	3			7	2	13
Violating stock law	1			1						
Violating game law	6	1	4	1						1
Violating school law	1			1						
Violating election law	1			1						
Totals	240	140	24	63	12		73	14	3	46

Percentage of convictions, 58.33. Predominant crime, distilling.

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